UNITES STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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DIANA FALERO,

Plaintiff,

-against-

DOMINO'S PIZZA, LLC and "JOHN or JANE DOES," Fictitious names intended for the operators of the vehicle,

Defendants.

Civil Action No.: 17-CV-00151
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16 Court Street
Brooklyn, New York

August 25, 2017
10:03 a.m.

Deposition of an Expert Witness, CHARLES ALAN KAPLAN, M.D., pursuant to Notice, before Christine DeRosa, a Notary Public of the State of New York.

A P P E A R A N C E S:

RUBENSTEIN & RYNECKI
Attorneys for Plaintiff
16 Court Street, Suite 1717
Brooklyn, New York 11241
BY: FARRIS FAYYAZ, ESQ.

CHRISTOPHER KENDRIC, ESQ.
Attorney for Defendants
1225 Franklin Avenue, Suite 450
Garden City, New York 11530

F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that the sealing, filing and certification of the within deposition be waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved to the time of trial;

IT IS FURTHER STIPULATED AND AGREED that the transcript of this deposition may be signed before any Notary Public, with the same force and effect as if signed before a clerk or Judge of the Court;

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the F.R.C.P. cannot be deemed waived, and the appropriate sections of the F.R.C.P. shall be controlling with respect thereto.

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C H A R L E S A L A N K A P L A N, M. D.,
called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

THE COURT REPORTER: Please state your full name for the record.

THE WITNESS: Charles Alan Kaplan, M.D.

THE COURT REPORTER: What is your address?

THE WITNESS: Work address is 100A Livingston Street, Brooklyn, New York 11201.

MR. KENDRIC: What is your home address?

THE WITNESS: 75 West End Avenue, Apartment P8E, New York, New York 10023.

EXAMINATION BY
MR. KENDRIC:

Q. Good morning, Dr. Kaplan.

A. Good morning.

Q. Sir, my name is Chris Kendric. It is my pleasure to meet you, sir.

A. Nice to meet you.

Q. I'm here on behalf of the defendant in this case, Domino's Pizza, LLC. I'm going to have quite a few questions here this morning.

If at any time you don't understand my question, you don't understand the way that I've phrased the question, would you please let me know that?

A. Okay.

Q. I really don't have any interest and Mr. Fayyaz has no interest in you guessing at what information I'm trying to elicit from you.

All right?

A. Okay.

Q. Are you affiliated with Spine & Orthopedic Rehab Center, P.C.?

A. Yes.

Q. And they're located in Queens and also in Brooklyn?

A. Correct. I believe a year or two ago, they separated into two corporations, so I mean, corporate-wise, Queens and Brooklyn are separate.

Q. Can you tell me the difference, please?

A. Location?

Q. No. The different corporate entities, which belongs to what?

A. I think Queens is called Sports Medicine & Rehabilitation.

Q. P.C.?

A. Not sure. Likely.

Q. Well, as an attorney, I have to either be a P.C. or PLLC. I trust you're probably a P.C.?

A. Yeah. It's not my corporation.

Q. But that was Queens?

A. Correct.

Q. Spine & Orthopedic Rehab, are they also located in Englewood, New Jersey?

A. The truthful answer is I'm not quite sure. There's the entity called Health East. I believe Dr. Kyriakides, because he lives in New Jersey, does have a small office at the New Jersey center. I've never been there. I've never worked there. I know it's on the card. I don't know the -- the full

status.

Q. Who is Dr. Kyriakides to you?

A. My employer, my boss.

Q. You may have just answered my next question.

What is the nature of your affiliation with Spine & Orthopedic Rehab Center, P.C.?

A. Employee.

Q. Do you have any ownership interest in that entity?

A. No.

Q. Are you affiliated with New York Orthopedic Surgery & Rehabilitation?

A. I'm almost going to have to say -- well, I'm going to say no because I'm not quite sure really of the corporate entity, if Queens got changed to that or if that's Dr. Scilaris. I -- I don't know.

Q. I'm going to just gently refer you to the nerve conduction velocity testing and EMG testing that was done in this case, and this is where I see New York Orthopedic Surgery & Rehabilitation (indicating).

There's Dr. Kyriakides (indicating) and there's you, Charles A. Kaplan (indicating).

A. Again, when there was some corporate structure changes like -- again, even though I work there, I don't really look at the paycheck so much to see the names.

I believe Sports Medicine was always the name of Queens. And then there was corporate structural changes - because I used to work both, Queens and Brooklyn, part-time, part-time, and now I'm only in Brooklyn - and it may have gone through a change because there was talk of somebody buying into the practice, not myself. I don't think it ever happened. So I don't -- I don't know the full status of that, but it's, I mean, our office.

Q. So you may or may not be affiliated with New York Orthopedic Surgery & Rehabilitation?

A. I guess the answer to that is yes, I may or may not. I don't -- I don't get paid by this company. I don't have a corporate answer on that. I'm sorry.

Q. And that's fine. As far as I know, that can be a trade name, that can be an assumed name. I don't know. That's why I'm asking the questions.

A. Yeah.

Q. All right. So let me just skip back for a moment, please.

What is the nature of your affiliation, if any, with Sports Medicine & Rehabilitation, P.C.?

A. So I used to work in the Queens office from the middle of 2008 and the Brooklyn office part-time, some days a week in one and some days a week in the other. And maybe about two years ago or so, I became just Brooklyn full-time and really no more in Queens. And, again, this was a time there was some restructuring, and so I don't have more to say than that.

Q. That's fine.

Dr. Kaplan, what do you mean by "restructuring"?

A. Well, again, there was -- it used to be one company, I guess, with two addresses

and one tax ID number. I believe there's two tax ID numbers now. I don't have anything to do with Queens now, so I don't know what's going on.

I know last -- like, I used to get health insurance and it was always -- they never changed it from Queens. And then this year, I guess the health insurance company said, oh, you're not really in Queens, you have to do it through there, and it affected my health insurance. So I'm just now in the Brooklyn office.

Q. Okay.

Did you ever hold an ownership interest in Sports Medicine & Rehabilitation, P.C.?

A. No.

Q. Now, are you or have you been affiliated with Health East Medical Group or Health East Ambulatory Surgical Center?

A. No.

Q. Not currently, not anytime in the past?

A. Not anytime.

Q. Do you have an ownership interest in any facility that I have not mentioned which provides healthcare services?

A. No.

Q. Are you familiar with New York Spine Institute?

A. The name is familiar. I -- the name is familiar. I'm not exactly sure. I think it's a Manhattan group.

Q. Are you familiar with South Dean Orthopaedics?

A. I've heard the name. Again, I don't know who owns it, what the structure is. I believe it's Dr. Scilaris' New Jersey orthopedic practice.

Q. But are you in any way affiliated with South Dean Orthopaedics?

A. No.

Q. Sir, do you have an ownership interest in any facility providing ambulatory surgery services?

A. No.

Q. Do you have an ownership interest in any diagnostic imaging facility?

A. No.

Q. Do you have an ownership interest in any --

A. Oh, I just -- I'm sorry.

Q. Go ahead, sir.

A. New York Spine Institute, I'm trying to think. You know, I did work in an orthopedic spine center in Long Island for about 10 months in 2011. It's so out of my mind. Again, I -- you know, I walk. I don't own a car. Some people say, you know such and such street? I say no, but I obviously walk by it every day, so I -- I mean, that may have been Long Island.

Q. If, in fact, you were working for the Long Island office of New York Spine Institute back in 2011, is that to say you were also working at that same point in time for New York Spine Institute, Sports Medicine & Rehabilitation, P.C. and Spine & Orthopedic Rehab Center, P.C.?

A. I think at that time there was only the Queens office, so I don't think the -- it was only Sports Medicine &

Rehabilitation. And I did Fridays because my work schedule at the Queens office was Friday, half a day, and I needed a little bit more work and they didn't have it, so I arranged it so that I would just go Fridays to Long Island, and that lasted about 10 months.

Q. To fill the rest of your Friday?

A. Yeah.

Q. Okay.

When did the Brooklyn facility open up?

A. The Brooklyn facility, that I know of was always there. I mean, I've been working in Brooklyn myself since 2009. I don't know when Dr. Kyriakides started it. He moved the office from Montague Street to Livingston Street -- I'm tending to think it was three years ago, maybe a little less. And that's, again, where I think the name change got separated out.

Q. Doctor, the reason I ask the question is because I'm just a little bit confused.

You told me a moment or two ago

that you used to work in both the Queens office and the Brooklyn office, and that started from the middle of 2008?

A. Correct.

Q. I asked you a question about New York Spine Institute, and you said you were there for a short period, Fridays, only half days, in 2011 for 10 months' time?

A. Correct.

Q. And I asked you, well, does that mean that you were working at all three facilities, Brooklyn, Queens and Long Island, and you said --

A. I think you said entities, and at that time, there was only Sports Medicine. There was no separate corporate entity name for Brooklyn. Physically, it was three locations, but I believe it was only two entities. The one in Long Island and Sports Medicine covered both locations.

Q. Thank you very much.

Do you understand that Diana Falero has brought a personal injury action in connection with an accident occurring on

May 4, 2015?

A. Yes.

Q. Dr. Kaplan, your initial evaluation for Ms. Falero was on May 12, 2015?

A. Correct.

Q. So eight days after the happening of the accident?

A. Correct.

Q. Your office note from that initial evaluation on May 12, 2015 refers to an "intake list."

Are you familiar with that term?

A. Yeah.

Q. What information is recorded on a Spine & Orthopedic Rehab Center intake list?

A. Okay. First of all, I don't have that with me. Basic patient name, address, insurance information, if there was a lawyer, the lawyer's name, body parts that were injured. They fill out past medical history items, medications, they sign it.

Q. Anything else?

A. I think that's it. I mean...

Q. How many pages is this intake?

A. Again, I don't have it in front of me. In 2015, I think it was a different one than we use now. It could have been two or three pages.

Q. Dr. Kaplan, who actually fills out the intake?

A. The patient.

Q. You mentioned they sign it.

Is that the patient signs it?

A. I believe so, yeah. Yeah.

Q. To what, to lend authenticity to the intake?

A. Yeah, I believe so. I don't have the form in front of me, so I'm going by memory and it's also a form from a couple of years ago.

Q. All right.

Did you bring your medical chart with you today?

A. Yes.

Q. Can I take a look at that, please?

A. This is the chart (indicating), and this is some handwritten notes I made last

night (handing).

MR. KENDRIC: Let's have this marked, please.

(Kaplan, M.D. Exhibit A, One-page handwritten notes created by Dr. Kaplan, marked for identification.)

Q. I'm going to hand you the one page of handwritten notes now marked as Kaplan, M.D. A for identification (handing).

Let's start, please, at the top of the page on the left-hand side. Tell me what words you're writing and what those words signify such that you in preparation for today's deposition wrote them down.

A. So the upper left is stating of the areas of injury that she reported to me on the initial consultation of May 12, 2015. And the first word is "dizzy." Below that is "head." Then it says, "C/L," cervical and lumbar. Then there's "L/R," left and right, "shoulder"; "L/R," left and right, "hips, knee, ankle, feet." And then it says, "lip switch."

Q. Then over on the right-hand side?

A. It says, "no ER," and below that, "no prior." That means I didn't have -- I went through the notes, and I didn't have emergency room or much prior records.

Q. I apologize if you've already said this. Did you say that you went through the chart last night and prepared this last night, this sheet?

A. Correct.

Q. I appreciate it.

So now, I'm moving my way down the page and to the far left-hand side?

A. These are the past medical issues that she, again, stated to me on the May 12, 2015 visit. "HTN" stands for hypertension. Then there's a slash and then an arrow up "cholesterol," so increased cholesterol. Below that, "fibromyalgia." Below that, "arthritis, back/knees." Below that, "C/L," meaning cervical and lumbar issues. Below that, "hip bursitis." And below that, "bilateral sciatica."

Q. Dr. Kaplan, does it make more sense for us to continue down the left-hand

column?

A. Yes.

Q. Okay.

A. Below that is just the medicines she reported she was taking on the initial examination. They are Mobic, Robaxin, Lidoderm patch, morphine, Zoloft.

Below that, it says, "SSI." That means she told me she was on Social Security Disability. Then there's a question mark "Sx," which I write for surgery, so I didn't fill it in, but there was a question if she did list surgical procedures on the initial.

Below that, it says, "4/17." That was the date she actually saw Dr. Faloon. It's not mentioned there, but that's the -- I called my office and that's the date that Dr. Faloon saw her, April 2017.

Q. Who is Dr. Faloon?

A. Spine surgeon.

Q. Is he in your medical practice?

A. He comes to the office once a month, so he's affiliated with us. I believe he's considered his own separate corporate

entity.

Q. Do you know where his practice is located?

A. He does have another practice in Manhattan.

Q. What is his first name?

A. Michael.

Q. Is he an orthopedic surgeon, a neurosurgeon?

A. Orthopedic surgeon.

Q. Do you know where his office in Manhattan is located?

A. Not exactly. I'm tending to think between the teens and the 40s, midtown-ish.

Q. Very well.

So now if you don't mind, let's go to that middle column.

A. So the middle column lists the body parts that were injured, and I've listed the initial ranges of motion and then arrows pointing to the right, and then there's another range of motion showing some increase or progression of the ranges of motion.

So on top, there's a "C" for cervical, and then there's motions listed there which are in my notes. "L" is lumbar. "SH" is shoulder. The hip says "hip." There's a "K" for knee. There's an "ankle."

Below that, at one point I guess she mentioned increased tingling in the upper extremity, "(L)" for left. And at some point, I guess a symptom change, it was increased left shoulder pain with decreasing motion and weakness. And then below that, a new sign was a Romberg test.

Q. Let me just break this down a bit. These notes that you took and specific to this middle column, you said it but I want to be a little more clearer on it, these are the original range of motion measurements taken by you in your office on May 12, 2015, and later on, if there was improvement or, let's say, there was a worsening of the range of motion that would be noted as well?

A. Pretty much, yeah.

Q. "Yes"?

A. Yes.

Q. In my experience, doctors go through their range of motion in a particular order. I trust you do as well?

A. Pretty much, yeah.

Q. So let's go through it nice and slowly starting with cervical and tell me -- I can read the numbers by myself, but maybe you can tell me what those numbers refer to, cervical flexion, cervical extension, right lateral bending, you have to tell me, please.

A. Sure. So the first one says 10/10, so that's flexion and extension. She had 10 degrees flexion, 10 degrees extension. There's a little arrow to the right. At some point that improved to -- I wrote 20. It was probably 20/20, but I only wrote one "20."

Below that is 40/40. That represents rotation, turning left and right. And the arrow, at one point it went down to 30. Then it went up to 50. Then it went up to 60.

Below that is a 10. That's left and right side bending was 10, went up to 20.

The "L" for lumbar, she had a 30

forward flexion and a 10 extension. At some point that went up to 40 for flexion and then 45.

The 10/10 there represents left and right side bending, and it looks like I put the arrow going to 20 slash and it looks like another 20. It's very small.

Then we have the shoulder and --

Q. External rotation?

A. No. The first one is going to be --

Q. (Indicating.)

A. No. That says, Scilaris, 165. That's what the orthopedist measured it at some point when he saw her.

Q. Thank you.

A. So the shoulder there is forward flexion, abduction. Again, these are brief notes. I mean, if I went to my notes and you said, oh, I see shoulder flexion was 110 and abduction was 120, and I just said it's probably for both, these are brief notes, so I'm reading it to you, but that's forward flexion and abduction.

And I guess at one point, I have R greater than the left. It could mean that she was complaining more of the right. I don't remember. But eventually, it went up to 140 and then up to 150.

The 50/50 represents internal and external rotation, which eventually went to 60 and then -- again, I would have to look here because this is just a brief note. It looks like it may have went up to 70. There was impingement signs.

Then the hip, she started with flexion and internal rotation there, 90 for flexion, 10 for internal rotation, and went up to 100 degrees.

The knee, again, it says zero to 110, in parentheses, left greater than right. It probably means she was complaining more left greater than right, and then eventually those went up to 115.

The ankle, there's 15/30, representing dorsiflexion and plantar flexion, and those went up to 20 and 35. Inversion is 10, eversion is 5, and it looks like those

didn't change.

Q. So in a sense, you're quickly charting her progress with respect to at least range of motion while under your care?

A. Correct.

Q. So now let's please turn our attention to the right-hand column.

A. Okay.

You want me to read it?

Q. Yes, please.

A. So I wrote there, "no meds." I didn't prescribe her medication because she came in already on several pain-related medications. So I wrote "PT" for physical therapy, that she was on PT.

And then I listed medical devices that she obtained, a cane, TENS, transcutaneous electrical nerve stimulator, LSO, a lumbar sacral orthosis, that's a back brace, C-traction, that's a home cervical traction, and knee braces.

Then below that is a brief synopsis of MRIs and diagnostic testing that were ordered, "C/L MRI," cervical and lumbar

MRI. I put two little pluses up there indicating there were findings. I have in parentheses, "prior negative."

Then below that is actually a procedure. It says, "TP," trigger point, "L/S," lumbosacral. Then it went into more notes into the -- then she had a right shoulder injection. Then she had a left shoulder injection, and then I wrote "times two," because she must have had it again. Then I wrote that she had cervical and lumbar trigger injections again.

"C/L EMG," electromyography, cervical and lumbar, and I wrote two positives, so there were positive findings.

Right shoulder, again, back to MRI, positive; left shoulder -- underlined left shoulder, positive; left and right hip, a little positive sign below that; right knee, I have below that, "Fx" for fracture. Left foot, it looks like post-op changes/OA.

Below that, the doctors I referred her to --

Q. Wait. Osteoarthritis?

A. Osteoarthritis, I'm sorry.

First is listed Dr. Moise, pain management. Below that is Dr. Scilaris. There's a little parentheses there, and at first I wrote, "she did not want," that was her original course of plan, but that subsequently changed.

Below that, I had Dr. Perse (phonetic), who was a foot doctor. At one point, her foot was really bothering her. She never went. It started to ease up. We agreed she didn't have to see him. Then it says Dr. Faloon, and it says, "no Sx," meaning no surgery. She had one visit with him.

Q. No surgery --

A. For the spine.

Q. No surgery performed or no surgery contemplated?

A. No surgery contemplated at that time, which was April of 2017, and there's no note available on that.

Q. What do you mean "there's no note available on that"?

A. I don't have it. It's not in

the office. It could have been anything he dictates or whatever he does, it didn't come out properly. Right now, it's not available.

Q. Okay. So let's finish up and then I'll --

A. Okay. Below that towards the left, it says, "Lempert." That's a neurologist that I more recently recommended she see for balance potential issues.

Below that lists some procedures, "L - epidurals," lumbar epidurals, "/MBB," medial branch block." I wrote "times two." Left knee surgery, and then the date, 11/29/16. Right knee surgery, the date, March 16, 2017. And then below that, "C - epidural," meaning cervical epidural, "/MBB," meaning medial branch block.

Q. Okay. Thank you very much. That was great.

So we touched upon the fact that the patient intake is not here in front of you. Where is it if it's not here?

A. Probably in the computer in the office.

Q. At Spine & Orthopedic Rehab Center, does your staff scan in handwritten and signed intakes given to you by the patient?

A. I'm going to say generally, yes.

Q. So when we say it's in the chart, it's in the chart as a PDF with, presumably, Ms. Falero's signature on it?

A. Presumably. I -- I -- I didn't look in the computer for this myself, you know. This pack was handed to me last night when I left the office because that's when I found out I was coming.

Q. Now, I understand that you created the one-page document, Kaplan M.D. Exhibit A for identification.

These other pages that you brought with you, is this Ms. Falero's original chart, are these photocopies of the chart?

A. No. There's a button that says "print chart," and it gets printed. I mean, it's not a photocopy.

Q. So is that to say that Spine &

Orthopedic Rehab does not maintain a paper chart on the individual patient?

A. Yeah. We went paperless years ago. Actually, very little was -- I'm not even sure if it was a paper chart when I was there in 2009. Yeah, I think many doctors' offices don't have paper.

Q. So, Dr. Kaplan, would it be fair and accurate to say that if I called for the production of Ms. Falero's quote, original chart, as maintained by Spine & Orthopedic Rehab Center, you would hand me these pages because these pages that you brought with you are, in fact, recreatable at the press of a button, this is her original chart?

A. Correct.

Q. May I ask you, please, in this case, do you or does your staff at Spine & Orthopedic Rehab Center maintain MRI images either on film, which is old school, or on a CD-ROM or in the computer itself?

A. The answer is generally, no. There are patients who sometimes they get MRIs from other people and they're waiting to see

the spine surgeon and we'll keep -- they'll hand them to the front desk. We keep them in a little box. They stay there two, three weeks until their appointment comes up, and then they go back to the patient. So we're not really maintaining disks or films.

Q. Because keeping all of those boxes can get --

A. Pretty much.

Q. Okay. And that's why you've gone paperless also?

A. Correct.

Q. So tell me, if you know, please, does Spine & Orthopedic Rehab Center maintain any MRI images on this particular patient, Diana Falero? I know you have reports. I'm talking about images right now.

A. I'm going to say no.

Q. But to be sure, you've received MRI reports from persons who you trust as reputable qualified radiologists, correct?

A. Correct.

Q. All right. Feel free to look at anything you want to.

Okay?

A. Okay.

Q. Can you tell us, please, what function or purpose does the intake serve for you, the physician, or for Spine & Orthopedic Rehab Center?

A. The intake form that I don't have here?

Q. Yes. Correct.

A. For me, it's --

Q. And by the way, I'm not critical of the fact that you don't have it. We'll get it eventually. It is what it is.

A. Okay. 98 percent, 99 percent of the people fill out a form. You do have some people who don't fill it out. If you pulled it up today, that you had it, and there was a blank under the name, what can I say?

But for me, I'm interested in the medical information. You know, I'm not interested in, you know, their private insurance company. We never really bill anybody. You know, if they put GHI, Blue Cross, I'm not involved with the business of

the office. I don't take their addresses and things like that.

So I'm interested in what boxes they are checking off, head, neck, shoulder, this and that, and they write relevant past medical-surgical history and things like that. If they are right-handed, left-handed, I believe are on the form. So the medical information.

Q. What functional purpose does that serve for you, the physician, or for the practice, Spine & Orthopedic Rehab Center?

A. So one, in terms of general medical issues, diabetes, high blood pressure, things like that, you get a general sense of the patient's health, would they even be able to do physical therapy, would they even be able to do surgical procedures down the road. So you get a function -- information about their general health, is one thing.

The second thing is prior history of problems in associated areas that they are coming in that day to tell me they have. Again, past surgical history, things might be

related to body parts they're coming in to complain about, or unrelated in that they might have said they had a procedure but they had a reaction to anesthesia. Again, if they went to see the surgeon down the road, they would also get that information, but it would be available here.

Medications, again, things that are, let's say, unrelated medical problems that would preclude me from writing a medicine that I wanted to write for a painful condition or if they were on pain medications already. Allergies, you know, again, if they have allergies to medicines, what I could or could not write for them.

And review of systems, getting information about other body parts, smoking, drinking, work history, things like that.

Q. It serves to give you a clear picture of this patient's state of health and what you may or may not be able to do for him or her?

A. Correct. You know, I'm not going to say, you know, it's the most clear picture

because some people don't know how to explain or even in the short boxes, if we're talking about the boxes you write down, you know, everything, someone writes "diabetes," it could be somebody who watches their diet or takes a simple medicine or the patient may, in fact, have been hospitalized, so it's a short box they have there.

Q. Does it permit you, the physician, to inquire further if you see something on the intake that catches your eye and may be relevant?

A. It can, yes.

Q. Only if you know, Dr. Kaplan, how was it that this particular patient, Diana Falero, came to see you? How was it that she came to seek treatment from Spine & Orthopedic Rehab Center?

A. The truthful answer is, I don't know exactly how she came to the office. She came to see me because I was working the day she made the appointment. Obviously, again, before last night, I don't recall knowing that her attorneys are Rubenstein & Rynecki. I

just either knew for the first time yesterday or re-remembered it was Rubenstein & Rynecki yesterday. Again, it could have been that the patient came from the attorneys or they could have come to us first and happened to have Rubenstein & Rynecki. I don't know.

Q. Would that information be listed on the intake, like a referring source, whether the patient came to you from a litigation attorney versus from, let's say, her PCP, her primary care physician?

A. There is an area. Again, I don't know what she filled out, but it doesn't really say -- I don't believe it says "referral." It just says, who is your attorney, meaning -- again, people do know us. I mean, she could have a friend who said, see Kaplan, see Rubenstein. I don't know. So I don't think it says "referral" there, just a list.

Q. Do you know if Ms. Falero had been seen or treated for the injuries she claims to have received in this May 4, 2015 accident by any physician, sir, after visiting

the emergency department at Kings County Hospital but before coming to see you on May 12th?

A. I have no documentation or comment in my notes about that.

Q. Which means what to you, if anything?

A. On some level, it could be -- let's say, she didn't see somebody, okay. I don't have it documented plus or minus either way, so I guess you can say there's some information that's missing there which could actually be information or maybe there's nothing there. I don't know.

Q. Let me make it a little more concrete.

In your medical practice, do you typically record healthcare providers that the patient has been seen or treated by prior to arriving in your office for the initial evaluation?

A. I would say that the answer is typically, yes. I will say that it's possible either it didn't come up, I didn't record it,

the patient, perhaps, didn't volunteer it. It can happen because, you know, there's -- it's possible it could not happen.

Q. Well, these different office notes that you have before you, do you dictate your office notes?

A. Yeah.

Q. Is the audio recording saved for some period of time or does it --

A. No. No. It's not that kind of dictation. It's a drag-in dictation. It goes right into my computer. There's no service.

MR. KENDRIC: Off the record.

(Discussion off the record.)

Q. So here we know that Ms. Falero provided a past medical history?

A. Correct.

Q. Similar type of question: Can you tell us why your office takes a past medical history from the patient at the time of that initial evaluation?

A. It's -- number one, it's standard good medical practice. Two, sometimes people don't write everything or certain things on

the intake form, so sometimes you get more.

Q. Who is taking that past medical history?

A. That is me.

Q. That's you, the physician?

A. Yeah.

Q. That's not a nurse who --

A. No. We don't have that.

Q. All right.

So if I understand the sequence correctly, the patient fills out the intake, you, the physician, take a look at the intake at the time of the initial evaluation because it may lead you to ask questions or assist you in charting a proper course of treatment for this particular patient, correct?

A. Correct.

Q. But then the past medical history is you verbally asking questions to the patient?

A. Correct.

Q. Is this something that she's filling out on the intake, the past medical history?

A. I believe there was a space for it, yes.

Q. Let me, please, have you concentrate on the different medications that were recorded on Ms. Falero's intake.

All right?

A. Yes.

Q. At the time of your May 12, 2015 initial evaluation, she was already taking Mobic, correct?

A. Correct.

Q. Prescribed for her by whom, please?

A. My understanding it's a preceding doctor before this accident. I don't have a name or more detail.

Q. And Mobic is --

A. Anti-inflammatory.

Q. It's used to treat what medical conditions, generally?

A. Many. Many. You can treat different aches and pains, pain conditions. You can treat, you know, menstrual cramps with it. You can treat headaches with it. It's

a pain reliever. It's an anti-inflammatory.

Q. Dr. Kaplan, what medical condition or conditions was it used for in Ms. Falero's individual case?

A. I can't say with certainty what her specific use was or when it was instituted. I'm going to say most likely, not her blood pressure or her cholesterol, but any of the others, it could be prescribed for.

Q. Okay. And we'll get to those.

Do you know for how long prior to the accident of May 4, 2015 Ms. Falero was taking Mobic?

A. I do not.

Q. Sir, prior to her coming to see you, did Ms. Falero suffer from ostearthritis or rheumatoid arthritis or both or neither?

A. I have in my note what she told me she had, which is arthritis. There's no documentation that she told me she had rheumatoid arthritis, and again, it is what she told me she had.

Q. She was not specific with you in terms of whether it was ostearthritis or

rheumatoid arthritis?

MR. FAYYAZ: As opposed to just plain arthritis?

MR. KENDRIC: Off the record.

(Discussion off the record.)

A. The answer is this -- well, she told me it's arthritis. If -- I'm going to say this: I don't have it documented that patient states she does not have rheumatoid arthritis. I'm going to say if that comment came up, either her telling me or me asking, I would have wrote "rheumatoid." So I'm going to tend to say it's just general arthritis.

Q. Is general arthritis synonymous with ostearthritis?

A. Well, again, you're talking about lay population and medical population. But it would be perfectly reasonable for someone who has ostearthritis to say, I have arthritis, and have the conversation continue, either with the doctor, even with a friend, and not have it come up the other way.

Q. Okay.

What dosage of Mobic was

Ms. Falero taking?

A. I don't have it recorded. It comes in two different doses.

Q. She was also taking Robaxin, correct?

A. Correct.

Q. Prescribed for her by whom, please?

A. I don't know for -- by whom.

Q. Robaxin is a muscle relaxant, correct?

A. Correct.

Q. Used to treat what conditions, generally?

A. Neck and back pain, spasm.

Q. What condition or conditions was it used for in Ms. Falero's specific case?

A. Again, I don't have it documented. I would say, you know, not her blood pressure or her cholesterol, and it could have been used for some of the other ones.

Q. What dosage of Robaxin was she taking?

A. I don't have it recorded.

Q. Dr. Kaplan, for how long prior to the accident of May 4, 2015 had Ms. Falero been taking Robaxin?

A. I don't have it recorded.

Q. Sir, I'm not in any sense trying to be argumentative with you. When you say "I don't have it recorded," is that to say you don't know?

A. Correct.

Q. All right.

Ms. Falero at the time of your May 12, 2015 initial evaluation was already wearing Lidoderm patches?

A. She was using them. I don't know if she was wearing them that day.

Q. That's fair.

Can you tell me, please, what are Lidoderm patches and what medical conditions, generally, are they used to treat?

A. So Lidoderm is lidocaine, which is an anesthetic. It's in a patch form. So it's a numbing medicine like when you go to the dentist, they give you lidocaine. This is

in patch form, and you can use it, again, for many different painful conditions.

And you can, generally, put it anywhere on the body that it will stick, meaning it will generally work better on a bigger body part like a back, a neck, a shoulder. It's hard to get them on the fingers, that's why you can get lidocaine in a gel form.

Q. Who prescribed these Lidoderm patches for Ms. Falero?

A. I don't know.

Q. Doctor, in Ms. Falero's individual case, for what medical condition or conditions had she been prescribed Lidoderm patches?

A. Say that again.

Q. I said, in Ms. Falero's individual case --

A. Oh, okay. Again, I'm going to say not -- most likely, not her blood pressure or cholesterol, and it could be any of the other conditions I have listed there.

Q. Can you tell me, please, for how

long prior to the accident of May 4, 2015 had Ms. Falero been wearing Lidoderm patches?

A. I don't know.

MR. FAYYAZ: Off the record.

(Discussion off the record.)

Q. We've had a brief off-the-record conversation. Dr. Kaplan, I just want to make sure that I'm being clear on the record.

These different medications that we've gone through so far in the questioning, is it, sir, your understanding that Ms. Falero was taking each of these prior to the May 4, 2015 accident?

A. That is -- that's my understanding of her case and my understanding of how my notes read as I look at them today and how I do my notes in general.

Q. All right. I'm not trying to confuse you. I'm actually trying to clarify the issue because Mr. Fayyaz had a question.

A. Right.

MR. FAYYAZ: Now, is it your understanding that these medications were not prescribed some time during

May 4, 2015 and immediately prior to your initial evaluation on May 12, 2015?

THE WITNESS: That's my understanding. Is it possible that either from the intake, my understanding of what the patient conveyed to me, and people sometimes -- again, she's sitting there in pain, they may not say the right thing.

I mean, if you can prove to me otherwise, I would accept legitimate proof that Mobic came from Kings County. But the way I do my notes, these medications are things she had before May 4th.

BY MR. KENDRICK:

Q. So continuing on, please.

Ms. Falero was already taking 60 milligrams of morphine, three times a day, prior to the happening of the May 4, 2015 accident?

A. That's my understanding, yes.

Q. And, Doctor, morphine is a narcotic?

A. Correct.

Q. It's used to treat pain, correct?

A. Correct.

Q. For how long prior to the accident of May 4, 2015 had she been taking 60 milligrams of morphine, three times each day?

A. I don't know.

Q. Sir, for how long had she been taking morphine three times a day?

A. Didn't you just say that?

Q. First I asked you for how long she had been taking 60 milligrams, three times a day. Now I'm asking you a slightly different revised question.

A. Can you say that again then?

Q. For how long had she been taking morphine three times a day?

A. I don't know.

Q. For how long before the May 4, 2015 accident had she been taking morphine?

A. I don't know.

Q. And the morphine was prescribed for her by whom?

A. I don't know.

Q. For what specific medical condition or conditions was she prescribed morphine?

A. I don't know.

Q. I apologize for the repetitive-type nature of these questions, but we are dealing with a lot of different medications.

A. Got you.

Q. All right. Among others -- and we're not going to go through every single one because I know she's taking cholesterol medication and such.

Among other medications, Ms. Falero was also taking Zoloft prior to the time of this May 4, 2015 accident?

A. Correct.

Q. And Zoloft is classified as an antidepressant, correct?

A. Correct.

Q. What different conditions, generally, is Zoloft used to treat?

A. Depression, you know, again,

there's an association with fibromyalgia. People -- there's an association with depression and fibromyalgia. Maybe some people don't get a full diagnosis of depression, but they will get Zoloft. But it can even be used to treat some headaches because there are some neurologists who say people who get chronic headaches are depressed, even though they have not been with a psychiatrist. So that's really it. Depression is the main one.

Q. Who prescribed Zoloft for Ms. Falero?

A. On this day of May 12th, I'm going to answer, I don't know.

I believe -- can I say something? I believe in one of my other notes, subsequently, I guess it came up and -- at this moment, I'm going to say I don't know, but she did tell me she did go to a psychiatrist for a short time and then stopped going, so I don't know who was continuing her medicine.

Q. Do you know, Dr. Kaplan, for what specific medical condition or conditions was

Ms. Falero prescribed the Zoloft?

A. I don't know.

Q. Do you know, sir, for how long prior to the accident of May 4, 2015 she had been taking Zoloft?

A. I don't know.

Q. Now, I understand you have given Ms. Falero certain injections in your office, true?

A. Correct.

Q. But you've never prescribed any oral medications for her to take herself; is that also correct?

A. Correct.

Q. Can you tell us why not, sir? Was there a reason why you refrained from prescribing oral medication?

A. Yes. I listed at least on several notes including this one, I will not be prescribing any medications as she's already taking several. She's on an anti-inflammatory. She's on a muscle relaxant. She's on a patch, and she's on a high dose of a narcotic. And I was, you

know -- she's on these medicines. I'm not going to add, at least on the first day. Let's get her into therapy and see how she performs. And later on, I was not going to be changing her medicines.

Q. Have you at any time subsequent to your initial evaluation prescribed oral medication for Ms. Falero?

A. I believe not.

MR. KENDRIC: I'd like to mark this as Kaplan, M.D. Exhibit B for identification, which states "Follow-up Report" with the date August 2, 2017, consisting of two pages.

(Kaplan, M.D. Exhibit B, Two-page document entitled Follow-up Report dated August 2, 2017, marked for identification.)

MR. KENDRICK: Let the record please reflect that coming into this morning's examination of Dr. Kaplan, the most recent office note that had been provided to me by plaintiff's counsel accompanied their notice of exchange of

expert information dated July 21, 2017, plaintiff's counsel provided me with a Spine & Orthopedic follow-up report dated June 14, 2017.

Now, I'm not saying this in any sense to be critical. It's just this is the very first time I'm seeing the follow-up report dated August 2, 2017, and this came to me from Dr. Kaplan's printout of Ms. Falero's original medical chart. So we're going to proceed. I just may need to take a little break to thoroughly review this August 2, 2017 report at some point before we close out the record.

BY MR. KENDRICK:

Q. Dr. Kaplan, was August 2, 2017 your most recent, most current evaluation of Ms. Falero?

A. Yes.

Q. Before August 2, 2017, was your most recent evaluation on June 14th of 2017?

A. Yes.

Q. Can you tell me, please, before

June 14th, when had you last professionally seen or treated Ms. Falero?

A. I saw her May 22nd for a shoulder bursa injection. And before that was May 3rd for a follow-up.

Q. May 22nd and May 3rd of this year, 2017?

A. Correct.

Q. At the time of her initial visit with you back in May of 2015, Ms. Falero presented to you with certain complaints; is that correct?

A. Correct.

Q. She stated to you that in the May 2015 accident, she had injured her head?

A. Correct.

Q. She stated that she had injured her neck?

A. Correct.

Q. Her lower back?

A. Correct.

Q. Both of her shoulders, left and right?

A. Correct.

Q. Both of her hips, left and right?

A. Correct.

Q. She stated to you in the May 4, 2015 accident, she had injured both of her knees, left and right?

A. Correct.

Q. Both of her ankles?

A. Correct.

Q. And both of her feet?

A. Correct.

Q. Now, Dr. Kaplan, this follow-up report dated August 2, 2017, this is your most recent, most current evaluation of Ms. Falero, correct?

A. Correct.

Q. And this follow-up report does not contain any expert medical opinion by you regarding causation; is that correct?

A. Let me just hear the question one more time.

Q. Yes, of course.

This follow-up report dated August 2nd of 2017, we've established, I believe, is your most recent, most current

evaluation of Diana Falero?

A. Yes.

Q. And this same follow-up report, August 2, 2017, does not contain any expert medical opinion by you regarding causation; is that correct?

A. Correct.

Q. It contains Ms. Falero's report to you about what body parts she feels were injured in the accident, no doubt about that, correct?

A. Correct.

Q. In your medical practice, are you from time to time called upon to prepare what is sometimes referred to as a narrative medical report?

A. Correct.

Q. And in your medical practice, Dr. Kaplan, does your narrative medical report typically contain your expert medical opinion regarding causation?

A. Yes.

Q. What is meant when you give your opinion that a particular injury is causally

related to an accident? What is meant by that legal/medical term?

A. That the event such as what she reported here caused, literally caused, her level of symptoms and her level of physical injury that can be examined.

Q. Say that again. I'm sorry.

A. That the event causes the injury including the level of complaints she has about pain as well as injury that can be examined, documented.

Q. When you say an injury that can be examined or documented, are you referring to an injury that can be objectively verified?

A. Correct.

Q. So we're on the same page, that's what you're talking about, correct?

A. Correct.

Q. Okay.

Now, did Ms. Falero's personal injury lawyers in this case, Rubenstein & Rynecki, ask you to give your opinion with respect to causation in connection with your most recent, most current evaluations of her?

A. I'm going to say no, because I have no recollection of any contact with them personally.

Q. If not -- I'm trying to be thorough here.

If not speaking to someone by telephone or face to face, did you receive instructions via e-mail or correspondence or indirectly through staff?

A. No communication, written, verbal, audio or anything.

Q. Did they ask you not to give such an opinion? Did they refrain you from giving such an opinion?

A. No. No.

Q. We've spoken about the fact that typically when you prepare a narrative medical report you do include your expert medical opinion on the issue of causation?

A. I'm going to say generally, yes.

Q. Did Rubenstein & Rynecki ask you to prepare a narrative medical report for this case?

A. I'm going to say no. I will tell

you, again, we sometimes do summary reports and that's a combination of a report that I make and Maria, who is the executive staff, putting it together. She will type in every single word from the MRI, everything from that. But if there is a special request for causality, that's going to be my opinion, but I have no knowledge of any requests being made specific to that.

Q. I can't help but notice that the June 14, 2017 follow-up report that I received from counsel is signed and the August 2, 2017 follow-up report that you've been kind enough to bring with you today is not signed.

What's the significance of that?

A. This one was signed by me (indicating), June 14th?

Q. Yes.

A. So let me see.

Q. Sure. Like in other words, what does your signature on a follow-up report signify --

A. I have to see it.

Q. (Handing.)

A. So I'm going to say this: You know, we do have a stamp. Some things get stamped. I'm not going to say that's what was there or that's my, you know -- sometimes the secretary says, you know, this needs to be signed. I look at it, okay, they want some signature to make it official. This is my note (indicating). That is my note (indicating). I generally do not sign my notes, and as you can see (indicating), it's not signed in the computer. So for me, it doesn't hold any extra -- I'm standing by this one signed (indicating) and this one not signed (indicating) to the same, you know...

MR. KENDRIC: Off the record for a second.

(Discussion off the record.)

Q. I didn't understand that last answer at all, sir. What do you mean by I stand by this, I stand by that?

A. Well, you know, this is my note (indicating). It's out of the computer. I can print it anytime and that's my note, okay. So if you said, Dr. Kaplan, you know, was she

walking with a cane on June 14th, I'm going to say, yep, I have it here (indicating). This one (indicating), same thing.

So what is the signature? To me, it doesn't hold any more validity. Somebody must have wanted -- I'm going to say somebody legal. I don't know if it was you (indicating). I don't know if it was him (indicating). I don't know who it was.

Q. On this June 14, 2017 report, is that your signature?

A. You know, it looks like my signature because it does look to me a little slightly different than a stamp, because we have a stamp. But, you know, again, to me it does look like a signature. It could be the stamp. I'm not betting my life either way on that. I'm not a forensic signature person, but someone must have asked, and I -- I signed it. That's...

Q. Okay. But none of the printed-out reports which came from your computer bear your signature, they are all unsigned?

A. Correct. And I will tell you this: It's somewhere recently in the office for new patients, so after this one, obviously, now there is a signature in there. Somebody wanted it, why, because they felt it was too much trouble to come ask for signatures or something. So it's in there now as a copy of my signature on the -- on the note.

Q. That doesn't actually get signed by you, but they affix your electronic signature to a document?

A. Yes.

Q. All right.

Now, without going into what your opinion might be, first, do you have an opinion as to whether Ms. Falero's claim of head injury is causally related to the May 4, 2015 accident?

A. I'm going to say this --

Q. It's yes or no, because if you do, I'll ask you about it. I just want to do this in an orderly way.

Without going into what your

opinion might be, do you have an opinion as to whether Ms. Falero's claim of head injury is causally related to the May 4, 2015 accident?

A. I want to answer it off the record first. I don't want to bust you either, but it's like --

Q. Let's try it my way first.

Do you have an opinion?

A. I have an opinion about a lot of things.

MR. FAYYAZ: As to the head injury.

A. This is my opinion --

Q. But wait. Wait. Hang on a second. No disrespect.

A. No, I'm not --

Q. I'm not trying to shut you down. I want to hear every single thing you have to say, but I want to find out first in my own way, if you don't mind, whether or not you do have an opinion as to whether her claim of head injury is causally related to the subject accident, May 4, 2015?

A. I'll answer it yes or no, if

afterwards I can explain.

Q. Of course.

A. Can I say no/yes? I'm going to say -- I'm going to say yes, and then...

Q. Just yes or no for now, have you formed an opinion at this time as to whether Ms. Falero's claim of neck injury is causally related to the May 4, 2015 accident?

A. Yes.

Q. Have you formed an opinion at this time as to whether Ms. Falero's claim of lower back injury is causally related to the May 4, 2015 accident?

A. Yes.

Q. Do you have an opinion, yes or no, as to whether Ms. Falero's claim of right shoulder injury is causally related to the May 4, 2015 accident?

A. Yes.

Q. Sir, do you have an opinion as to whether Ms. Falero's left shoulder injury is causally related - we just covered right shoulder, now the left shoulder - to the May 4, 2015 accident?

A. Yes.

Q. Do you have an opinion as to whether Ms. Falero's claim of right hip injury is causally related to the May 4, 2015 accident?

A. Yes.

Q. Do you have an opinion as to whether Ms. Falero's claim of left hip injury is causally related to the May 4, 2015 accident?

A. Yes.

Q. Do you have an opinion, sir, as to whether Ms. Falero's claim of right knee injury is causally related to the May 4, 2015 accident?

A. Yes.

Q. Do you have an opinion as to whether Ms. Falero's claim of left knee injury is causally related to the May 4, 2015 accident?

A. Yes.

Q. Do you have an opinion as to whether Ms. Falero's claim of right ankle injury is causally related to the May 4, 2015

accident?

A. Yes.

Q. Do you have an opinion as to whether Ms. Falero's claim of left ankle injury is causally related to the May 4, 2015 accident?

A. Yes.

Q. Do you have an opinion as to whether Ms. Falero's claim of right foot injury is causally related to the May 4, 2015 accident?

A. Yes.

Q. Do you have an opinion as to whether Ms. Falero's claim of left foot injury is causally related to the May 4, 2015 accident?

A. Yes.

Q. What is your opinion as to whether Ms. Falero's claim of head injury is causally related to the May 4, 2015 accident?

A. How do you want that answer, yes or no or causally, no causally, two words or a sentence?

MR. FAYYAZ: Well, he just asked

you if you have an opinion. Now he's asking you what is your opinion.

MR. KENDRIC: Yes, that's correct.

A. My opinion is this --

Q. Let's confine it to the head injury.

A. Okay.

Q. Because we're going to go through each of these separately.

A. Yes. So let me just -- let me just -- one little thing here (perusing).

So I'm going to say this: It's my opinion she doesn't have a permanent head injury from this accident; that while she did have some complaints initially, and I did mention it and I'm going to say not fully documented, but after the first visit, it really stopped being an issue of complaint including -- well -- (perusing).

It appears that I have documented here dizziness. I mean, let me just see something -- (perusing). I don't have it honestly in my notes as being an ongoing or

further elaborated complaint, so -- does that make sense?

Q. Not at all.

MR. FAYYAZ: Off the record for --

MR. KENDRIC: Well, let's stay on the record because this is important stuff.

MR. FAYYAZ: Just so that we're clear, Doctor, at first counsel asked you if you have an opinion as to whether or not the head injury --

MR. KENDRIC: The claim of head injury.

MR. FAYYAZ: The claim of head injury is causally related to this accident. You said, yes, you have an opinion.

His second question, limiting it to the claim of head injury is, what is your opinion as to causation. Now, the answer you provided was, you don't believe that Ms. Falero has a permanent head injury from this accident, which is

fine, but what he's really asking you is, what is your opinion as to whether or not the head injury was caused by this accident.

MR. KENDRIC: The claim of head injury.

MR. FAYYAZ: Right, the claim of head injury was caused by this accident.

So you can answer that question, and feel free to refer to your notes.

A. I'm going to say this: That, again, on the initial examination, she did have some complaints relating to that, which I'm going to say are not in depth documented and I'm going to say, from my opinion, they mostly, you know -- again, I do have this report of dizziness on the notes on top always. My understanding is this was not a -- a -- a repetitive complaint.

She did have on physical examination, that I documented later on, a balance issue, and I recommended she speak to her internist to get to see a neurologist. She went to the internist, but he didn't refer

her, so then I gave her a name of Dr. Lempert. But I -- at that time, I'm not making a connection between her balance disorder and this accident.

Q. You are or you're not?

A. I'm not.

Q. You're not?

A. Not. If a neurologist wanted to supersede me on that, I would say, okay, but I did not make that connection.

Q. I don't think that you'll let me put words in your mouth, but I'm just trying to help things along.

Have you formed an opinion with a reasonable degree of medical certainty as to whether her claim of head injury is causally related to the subject accident?

A. I would say yes. And sometimes in notes when I write like this, I would write, hyphen resolved. You understand? So she did -- I'm saying she did have some head complaints initially, which I'm stating are not fully -- she had many other complaints here, and by my notes, there's dizziness and

head pain, which I did even in the diagnosis give her post-traumatic headache. But I'm going to say based on the review of my notes, this did not represent a persistent issue that came up, that I did not send her for a brain MRI or something like that. So I'm going to say that from my notes and from my recollection of her, I cannot say that I'm documenting a persistent head injury problem that on August 2nd is unresolved such as her neck, her back and so forth.

So the balance issue that I started to see, I originally recommended she speak to her internist because I did not think that that was or should be taken -- at least initially, from this, I thought she had to go get a neurology workup. And that didn't happen, so I recommended that she see Dr. Lempert in the last few months.

But I'm not stating that that balance disorder, which can be either from the head or a number of problems, was from this.

Q. This accident?

A. Correct. And if she is still

complaining, I'm going to tell you that I don't have all the documentation to say much on that.

Q. If a claim of head injury is causally related to the subject accident, you don't have medical documentation to support that opinion?

A. I'm going to say yes.

Q. That you do not have medical documentation to support the opinion arrived here at the table that her head injury, however short-lived, was causally related to the happening of the accident?

A. I would say whatever head complaints, again, which I listed it here as post-traumatic headaches, so she must have had more than my notes reflect. So if you want to say from May 12th to June 9th, I'm accepting that there was some head pain injury from this, but not subsequently.

Q. From May 12, 2015 to June 9th of 2015?

A. Yeah. I mean -- let me double-check (perusing).

Okay. Yes. I mean, I think I'm saying something plain. I don't know why you seem shocked. I mean, it seemed to resolve.

Q. When?

A. Really by the next visit.

Q. Which was when?

A. July 2nd. I mean, again, unless I'm completely remiss about this.

Q. It seems to have completely resolved by July 2nd of 2015?

A. Yes, or to such an extent that it didn't come up in any further follow-ups. Although, there are patients, you know, that they sometimes don't tell you everything it's so minor to them. But whatever headache issue that she seemed to have on May 12th, which I'm, again, saying --

(Telephone interruption.)

THE WITNESS: Hold on. Let me just get rid of this.

MR. KENDRIC: Go ahead.

A. So, you know, if you look in the history, she must have told me more about her head. You know, she has the lip twitching

there. No vision changes, hearing changes, smell changes, vision or taste, you know, so it's --

(Telephone interruption.)

A. An evaluation, you know, for that day, I didn't think she was bleeding into the head, and then it became a non-topic.

THE WITNESS: I mean, am I wrong here or --

Q. You can't turn to him.

A. My opinion is, from this injury, she had some headache pain that seemed to possibility have the duration of time of accident through June 9th and I -- I don't have it as being a focus of my evaluation of her.

Q. All right, and that's fine.

Here is my question: Have you arrived at that opinion right here at the table right now?

A. No. I think that's my opinion in an unwritten way by really it not being addressed here, unless again, I'm completely wrong on every single note.

Q. Dr. Kaplan, do you know what I mean when I say "focal head injury"?

A. Yeah.

Q. What does that term mean to you?

A. That there's a lesion -- that there has got to be a documented lesion that there's a point -- there's a focal point of this part of the brain, that part of the brain giving symptoms.

Q. Now, review your notes, please, whatever notes will be helpful to you.

Did Ms. Falero suffer a laceration to any part of her body as a result of this accident, a laceration?

A. I believe no.

Q. Am I correct in remembering that your office notes document no ecchymosis about the head area?

A. Right.

Q. And what is "ecchymosis"?

A. Black and blue mark.

Q. Dr. Kaplan, do you have the opinion that Ms. Falero suffered a focal head injury as a result of the subject accident?

A. No.

Q. She suffered some headaches?

A. For --

Q. And I'm not trying to minimize it, but is that the sum total of it, some headaches for a short-lived period of time?

A. I believe so.

Q. Do you have any other or further opinions not expressed in writing in your follow-up office notes on the issue of whether Ms. Falero's claim of head injury is causally related to the subject accident?

A. I would say this: At a subsequent point in time, there was a balance issue that I detected and recommended she see a neurologist, which I still think she should do. If -- and my original thinking was I did not think it was related to the May 4, 2015 accident.

If a neurologist upon further examination, an opinion -- you know, found something and said, Dr. Kaplan, you missed it, I might have to, what's the word, you know, acknowledge that opinion. But I have no other

unwritten opinion about her head injury.

Q. Has she been evaluated by a neurologist?

A. I don't believe yet. She went to Dr. Lempert. It was several months ago. I recommended she speak to the internist and the referral, I said, that's not good enough, I do want you to see Dr. Lempert. It looks like it was June -- (perusing). Yeah, on June 14th, I sent her to Dr. Lempert.

Q. June 14th of 2017?

A. Yeah.

And going to see the internist was -- (perusing). So on February 1, 2017 is when I first recommended she see her internist about the balance issues and the positive Romberg test that she had displayed in the office.

Q. What is a "Romberg test" and what does it test for?

A. Basically, you have the patient stand, they put their arms out, they close their eyes. Some people start wobbling and falling right away. Some people, you give a

little, you know, push to the body and they lose their balance. And so that's the description of the test, and it's a balance disorder. It can be in the cerebellum. It can be in the spinal tract. But it's generally a central nervous system issue.

Q. Do you know or do your notes document whether Ms. Falero consulted with her internist regarding any complaint of loss of balance or complaint of dizziness?

A. So let me just see how my notes read (perusing).

So my June 14th note, because I had sent her to the internist, my note reads, "She states she mentioned the balance issue to her internist, but was not given a referral, although neurology was reportedly discussed."

Q. This led you on June 14, 2017 to refer her to Dr. Lempert?

A. Yes.

Q. Who is a neurologist?

A. Correct.

Q. But as of today's date, we've got no indication that she went to see

Dr. Lempert?

A. (Perusing.) I don't believe she's gone.

Q. Dr. Kaplan, you're a board certified physiatrist, true?

A. True.

Q. You've been practicing medicine for how many years as a licensed physician?

A. Licensed 1989, so it's 28 years.

Q. I've got a splitting headache right now. Am I telling you the truth or not?

A. I have no way of knowing if you're lying to me or not.

Q. Was it Ms. Falero's complaint of dizziness that at least preliminarily caused you to think that she may have sustained a nonfocal head injury as a result of this accident?

A. Say that again.

MR. KENDRIC: Can you read that back, please?

(Record read.)

A. I will say yes, in part, and it's possible she also mentioned headache, which

again, I will state again I don't have wording documenting that, but in my assessment on the first day, I did include post-traumatic headache.

Q. When did you first record a positive Romberg finding?

A. (Perusing.) It looks like February 1, 2017.

Q. Okay. I'd like to move ahead when you're ready.

What is your opinion as to whether Ms. Falero's claim of neck injury is causally related to the subject accident?

A. My opinion is that it's causally related.

Q. What do you base that opinion on?

A. Patient history. From what I under -- well, patient history, MRI and diagnostic findings that are clinically consistent with her complaints. And again, it's not a full -- it's a little medical record I have. I don't have a prior MRI of the neck, but mostly, the patient reporting. And, again, she did state she had problems in

these areas before, but the level of her pain had become much worse.

Q. Is Ms. Falero's subjective complaint of increased pain in the cervical region one of the bases for your opinion on the topic of causation?

A. Yes.

Q. What are the other bases for your opinion? In other words, to speak English, what are you basing that opinion on other than Ms. Falero's subjective complaints of pain?

MR. FAYYAZ: Other than the patient history and the MRI diagnostic test findings that he just mentioned?

Q. Well, the patient history was provided to you or provided to your office by Ms. Falero, correct?

A. Correct.

Q. And she acknowledged that she had pain in the neck preceding the subject accident, correct?

A. Correct.

Q. We know that she's taking Robaxin and other anti-inflammatory, narcotic

pain-control medication and such prior to the happening of the accident.

So here is my question: What nonsubjective medical evidence did you receive? So far I'm hearing MRI and diagnostic findings clinically consistent with her complaint?

A. Correct.

Q. Anything else?

A. (No response.)

Q. You understand I'm not arguing with you? The history is subjective. It comes from the patient. The complaints are entirely subjective.

I was joking around with you a moment ago, I have a headache. You have no idea, right?

A. And I agree with you.

Q. And to a certain extent as a medical practitioner, you have to take the patient at her word, correct?

A. Right.

Q. Sometimes she has a motivation to be truthful with you, sometimes she's not

necessarily being untruthful with you, but she could have a secondary motivation for making a complaint; isn't that correct?

A. Correct.

Q. Okay. So I don't want to get bogged down on all of that. Later on at trial, we'll get bogged down on all of that.

But here, on my fact-finding exercise, what are you basing your opinion on that she was caused, caused, a neck injury in the subject accident?

A. Okay. So --

Q. Don't talk to me about an exacerbation of a complaint. Talk to me about causation, please.

MR. FAYYAZ: Well, as part of his examination, he can talk about his --

MR. KENDRIC: Of course.

A. In terms of subjective complaints, I can only go by what she tells me, okay, so I'm relying on her completely for the history. I did not examine or know of her before May 12th. So there's an event that happened to her, which exacerbated her pain conditions

as she's reporting them. I know about her history in some regards here. She's honestly told me in her understanding of what they are.

I have an examination that does have, you know, physical findings of spasms, of loss of motion, which are consistent with complaints she's having, so there's consistency, right. I have MRI and electrodiagnostic studies that are consistent with her complaints, meaning they are not completely different, you know, so they're consistent with what she's complaining about, and I said that, they're consistent with.

Causality, I'm going to say this: In large part, it's my taking her at face value about her complaints. In terms of having medical records or not having much medical records, I only have one piece of medical record which does not relate to the -- well, I have a few pieces. I have -- I don't have a neck MRI prior. I do have a lower back MRI prior to 2013. What she told me, what I have here, herniated cervical disc in her past history is not documented in that

past MRI, so when she told me she had a herniated disc, that's her understanding or her words, but it's not actually a fact, at least by that one MRI I have. Her lower back MRI subsequent to this accident does show three herniated discs.

Q. This is the one that you sent her for?

A. Right.

Q. Okay.

A. So, again, a change in her lower back MRI, which does indicate difference, does indicate wow, that makes sense that she has a worsening back pain. It's consistent, okay, that -- she reported to me she had knee arthritis but, in fact, her knee MRIs did not reveal arthritis. So on some level, her wordage that she gave me is not completely accurate or an understanding of what we were able to communicate.

So barring having any other -- and, again, I don't know how we got this MRI. She brought it in. That's all the office, where we did it, sent it to us through HIPAA

compliance, I don't know. But barring the fact of not having a lot of prior neck information or any prior neck information, her complaints of worsening pain are the main reason. And based on also knowing the situations with her back, which I'm in accordance with, I will -- again, all patients I'm accepting that they're telling me, you know, the best understanding of the truth that they have. So she has an event. Her pain goes from one level to another level.

She also -- when she first came to me, we talked about trigger point injections.

Q. We're still on the neck, right?

A. Yeah. When she first came to me, we briefly spoke -- let me see (perusing). We discussed trigger point injections on the second visit. It's not stated neck or back, but in general. She told me she did have them in the past with another physician. She felt very sore from the injections, but she stated they, in fact, helped, but she didn't want to precede with any further injections.

However, her mind changed. Why? The level of her pain stayed at that high level, so, in fact, she did agree to undergo trigger point injections for the neck, for the back, epidurals, medial branch blocks for the neck, for the back when initially she was hesitant. So to me, that's stating, look, I was hoping it was going to get back to the way it was before, I was hoping it wasn't going to be at this high level. I don't want to go with injections, but now time has passed, it's too much for me. I want to go forward with this.

Where I have no history of prior epidural, medial branch blocks, so I'm relying on her history, how she interacted with me about various procedures. So there is causality of neck injury.

Q. Causality of neck injury or causality of neck symptomology?

A. I'm going to say both because as far as I know, at least in terms of imaging, I -- again, I don't know who faxed these MRIs to me or if she brought them in. That's all

I have, all the medical workup she had in her life on these things.

Q. Say that again. I'm sorry.

A. Let's say, okay -- let's say --

Q. I'm not asking you to expand. I'm just asking you to repeat what you said.

MR. FAYYAZ: Well, we can have it read back.

Q. Or if you want to expand --

MR. FAYYAZ: Let's just have it read back.

(Record read.)

Q. So Dr. Kaplan, if you will, please, indulge me, pull out what you say was faxed over to you.

A. Again, faxed or brought it in. I don't know.

Q. Right. Understood.

A. (Perusing.) (Handing.)

Q. You pulled out for us a lumbar MRI without contrast report and this was performed on December 20th of 2013?

A. Correct.

Q. I don't want to go off on a side

issue, but I did notice in several of your office notes starting with the initial evaluation on May 12th of 2015, you end your note with "we will try and obtain prior records"?

A. Correct.

Q. I see that on June 9, 2015, "we will try and obtain prior records"?

A. Right.

Q. July 12, 2015, "we will try and obtain prior records," and there are other instances, but I don't want to get bogged down on this.

What prior records, sir, did you try to obtain and what prior records were you successful in obtaining?

A. The one successful in obtaining is this lower back MRI (indicating).

Q. And for clarity of the record, that's the lumbar MRI performed on December 20, 2013, correct?

A. Correct.

Q. Any others?

A. No others.

Q. Any other medical information that you have on your patient, Ms. Falero, that preceded or predated the May 4, 2015 accident?

A. No.

Q. At all?

A. At all.

Q. Okay. Let me just -- as attorneys, we tend to beat things to death. Let me just beat this one last thing to death.

Are you saying to me, Dr. Kaplan, that the entire universe, the sum total of medical information that you have on Ms. Falero from prior to the May 4, 2015 accident is this December 2013 lumbar MRI report, interpretative report?

A. Correct.

Q. And nothing else?

A. Nothing else.

Q. All right.

For example, do you know, sir, if Ms. Falero had spasm upon palpation in the cervical region prior to the happening of this May 4, 2015 accident?

A. I don't know.

Q. Do you know, Doctor, if she had a quantitative or qualitative loss of range of motion in her cervical region prior to the happening of this May 4, 2015 accident?

A. I don't know.

Q. Can we talk for a moment about the nerve conduction velocity and EMG testing that was done of the upper extremities?

A. Yes.

THE COURT REPORTER: Is this an okay time to use the restroom?

MR. KENDRIC: Yes, of course.

(Recess taken.)

Q. So Dr. Kaplan, on September 1, 2015, that being the year of this accident, there was a nerve conduction velocity testing, also electromyography done of Ms. Falero's upper extremities, correct?

A. Yes.

Q. My reading of the report says that both the left and right upper extremities were normal on the NCV testing, normal for both function and sensory?

A. Motor and sensory.

Q. "Motor and sensory"?

A. Yes.

Q. Motor power?

A. No. It's not checking power. It's how quickly the signal moves up and down the nerve.

Q. Now, EMG testing, electromyography, all upper extremity muscle groups were normal and all paraspinal muscles were normal except for left C5/6 and left C6/7.

Am I reading that correctly?

A. Correct.

Q. Now, first of all, what is the difference between nerve conduction velocity testing and electromyography as referenced here in this report?

A. So --

Q. They're both electrodiagnostic tests?

A. Correct. Correct.

So the nerve conduction studies are checking, in general, for peripheral nerve

injury. The other nerve is traveling -- it starts in the neck, but it's traveling down the arm, and people can get injuries to the nerve in the extremities like the elbow, at the wrist, anywhere along the line, but the wrist and elbow are more the common ones, that can give pain.

And by doing these tests, we're able to see if things are normal and see if things are not normal in -- regarding the nerve function. Nerves for muscle control motion. Nerves for sensory control sensation.

Q. And please correct me if I'm wrong, you're testing the speed at which an electric impulse travels through a nerve from point A to point B?

A. Speed, and also the amplitude or the size of the wave form, but yes, from A to B.

Q. How is that different from an electromyography?

A. Well, from the needle part -- because people will call electromyography at times the combination of the two.

But needle electromyography is the needle part. So the needle, there is no electricity given to the patient. The needle is recording electrodes and it's put into various muscles of the person, their arms and their legs. And the needle is looking for abnormal signal, which is generated by a nerve irritation.

Q. What is the difference between upper extremity muscle groups and upper extremity paraspinal muscles?

A. So when the nerve, which, you know, starts from the spinal cord, when it exits the foramen, it branches into two branches, one is longer, comes down the arm, one is shorter, comes to the neck muscle. For the back, it would go down the leg or to the back muscles itself.

Q. So the longer of the nerves would feed or provide electrical impulses to the biceps, the triceps and so forth, but the shorter of the two, is that feeding the paraspinal?

A. Paraspinals.

Q. And where are the paraspinal muscles?

A. Back of the neck (indicating).

Q. All right.

Now, here, the left C5-C6 and left C6-C7 "showed slightly increased spontaneous activity."

What does that mean, "showed slightly increased spontaneous activity"?

A. So the normal is no spontaneous activity. A normal healthy person without any irritation on the neck has zero spontaneous activity, meaning when you put the needle in and the needle is in the person and you're looking at the monitor, there is no wave form going through the screen. There is no activity of a muscle, a muscle fiber, a nerve fiber is not being fired.

Spontaneous activity means the needle is in the arm, the arm is at rest in that particular muscle, and there is a signal that's coming across the monitor of the EMG machine. You see a blip and you hear a sound, so that is spontaneous activity. It's not

happening on its own. That nerve is being irritated up by the spine (indicating) usually, and produces this signal.

So it gets graded at one plus, two plus, three plus, four plus. One plus is just more than zero and less than two plus, so it implies that your findings are two spots in the muscle. So if I put a needle in a muscle and I see some spontaneous activity, because you're always moving the needle, it's not just one, you move it a little bit more, you get it again, it's one plus. Then I took the needle out and did it again, a little above or below that level, then she had that again.

Q. You did it or the technician?

A. I do the needle. Technician did the nerve conduction studies.

Q. I understand what you're telling me about placing the needle in different areas of that same muscle or paraspinal muscle, I understand that.

But here's my question to you: Did you or your medical practice ever do a repeat nerve conduction velocity test or

repeat EMG test to see if you could replicate the results that you found here on this September 1, 2015 series of tests?

A. No.

Q. What is your opinion as to whether Ms. Falero's claim of lower back injury was caused by this accident?

A. My opinion is that it was caused by the accident.

Q. What do you base that opinion on?

A. Again, her history, or, again, from the May 4, 2015 incident/accident, that she had worsening of her pains, that there's, you know, consistent examination with that complaint. There's MRI findings that is significant and clinically correlates with her complaint. That is new compared to a pre-May 4, 2015 MRI 2014.

Q. Once again for clarity, you're referring to that December 2013 lumbar MRI that was done?

A. Correct.

Q. Anything else that you reply upon or that you base your opinion on?

A. Well, the EMG is also consistent. She had a lumbar radiculopathy. And, again, that kind of EMG finding is consistent with, I'm going to say, relatively acute nerve irritation, so it's consistent.

Q. You mentioned a moment ago that you rely, in part, on the electrodiagnostic testing that was done of the lower extremities?

A. Yes.

Q. What date was that done, August 4, 2015?

A. Correct.

Q. Now, on the nerve conduction velocity testing, the technician found a decreased amplitude with respect to the left peroneal nerve?

A. Correct.

Q. Both motor and sensory?

A. No. The left peroneal is a motor nerve and there was amplitude with that on stimulation. The sensory was the left sural nerve.

Q. Pardon me on that.

A decreased amplitude, what does that mean?

A. So when you give somebody electric stimulation, you start at a low shock intensity. You feel it. It's mild. Because it's a low intensity, it doesn't stimulate every nerve -- fiber in that nerve. That nerve is like a cable. There's tens of thousands fibers in there. So on a low intensity, you don't stimulate them all, so you get a few, so the blip will be small.

As you increase the intensity, the blip gets more, meaning you're activating and stimulating more fibers. And you do that until that blip stops increasing so that you're at maximum. That maximum is less than standard normal that some people use.

Q. "That some people use," what does that mean?

A. So when you do a test, like if you said, does she have, you know, a peroneal neuropathy, this is a mild -- I'm not going to say insignificant, but close to an insignificant finding in that things like the

onset where she has 5.5, which is normal being less than 7, is a much more significant value. And for many, you know -- even though this is computer generated, you'll find many textbooks that do not pay attention to amplitude, but it gives some indication, but it's not -- no one is going to do a surgery on this nerve on that volume -- value.

This is anything from -- one possibility is aging. For all neurological diseases, or almost all, legs are always affected more than arms, so you will sometimes see a low value in their arm. People can have thick calves sometimes, thick legs, swelling in an ankle, so the intensity, even though you're on maximum, can't penetrate through swelling, so it's a small finding. It's not a big finding.

Q. The reduced amplitude in the left peroneal motor nerve?

A. Correct.

Q. And it is a small finding on the reduced amplitude of the left sural sensory nerve?

A. Correct.

Q. Okay. So this could be -- because we don't know for certain, this could be attributable to patient age?

A. Patient age, slight body habitus, swelling in the ankle, swelling in the leg. You know, she came in on August, so it's not cold. Sometimes that could happen on a cold day. But that also is not a, you know, significant -- very significant.

Q. Right. We're not going to run into surgery based on that finding?

A. Right.

Q. Now, let's look at the EMG testing, lower extremities, August 4, 2015.

All muscle groups are normal, correct?

A. Extremity, lower.

Q. I apologize to you, all extremity muscle groups normal.

But then all paraspinal muscle groups were normal except there was a finding of the right L4-L5 and there was a finding on the left side at L5-S1?

A. Correct.

Q. What was the finding?

A. Again, spontaneous activity. This one is fibrillation potentials. There's two main ones, fibrillation potentials and positive sharp waves. She had fibrillation potentials. It's just really a difference of almost how the signal is moving towards or away from the needle, and they're equal in terms of what they mean.

So, again, she has one plus. She did not have two plus, she did not have three plus, which implies more. You'll see more on the screen.

Q. The "one plus" is the slight deviation from whatever the examiner is considering normal?

A. Correct.

Q. The only thing below one plus is zero --

A. Correct.

Q. -- which is in the examiner's view completely normal? But it goes up to -- what did you say?

A. Four plus.

Q. Four plus, that's a more severe finding?

A. Correct.

Q. I asked you the same type of question.

Did you or did your office ever conduct repeat NCV or EMG testing of the lower extremities in an attempt to replicate the findings from the August 4, 2015 testing?

A. The answer is no, and I will say that is acceptable practice. Sometimes when a surgeon is deciding to go into surgery, he may want a new one, but with MRIs, a lot of people will say, oh, I'll get an MRI and see if it went away. It's not within the average or even the typical thing is to repeat it, so, yeah.

Q. Say that again.

A. You asked me if I repeated it, and I said no, but I'm stating it's, you know -- it's within acceptable medical practice to not have that. You are generally not doing these serially or sequentially.

Q. I understand that.

Was there anything found on the September 1, 2015 upper extremity series or the August 4, 2015 lower extremity series that was serious enough or significant enough to you, as the physician, to cause you to send her out for further testing like -- just to complete my thought, was anything worrisome from what you saw on these two series, upper extremity and lower extremity, that you felt the need as the physician to do something to explore the situation further?

A. No. The test was fine. She had MRIs. There was nothing further that needed to be done.

Q. She was fine, meaning what?

A. No, she is not fine. The test, speaking for themselves, is fine and complete as an evaluation for her.

Q. Dr. Kaplan, just for the sake of thoroughness, do you have any other opinion with respect to Ms. Falero's claim of neck injury that we have not already covered here in today's deposition? I'm not asking you to

repeat yourself necessarily, but I'll hear it again if you want to give it to me. Something that you have not expressed already? There's nothing expressed in writing and I'm trying to get it from your own mouth directly.

A. No.

Q. Do you have any further or additional opinion with respect to Ms. Falero's claim of back injury being causally related to this accident?

A. No. I think I stated what I needed to state.

Q. Do you have any further or additional opinion in your capacity as her treating physiatrist with respect to Ms. Falero's claim of back injury?

A. Her claim of it? I'm not sure what you mean. She's claimed it, I know that.

Q. Then let me apologize to you and be more specific.

A. Okay.

Q. We know, don't we, that Ms. Falero had a prior medical history involving lower back pain, correct?

A. I'm going to say yes.

Q. Do you know for how long a period of time prior to the happening of the May 4, 2015 accident Ms. Falero was complaining about lower back pain, was seeing physicians for complaints of lower back pain?

A. I don't have clear information on that.

Q. Do you have any information on that?

A. I know at some point, you know, she told me she stopped working in 2002 and then she went out on disability, I think, in 2007. I don't have clear information on that, if it was for one of her diagnoses, a conglomeration of her diagnoses.

I'm under the impression it was for some time. I don't think she got morphine, 60 milligrams, you know, the day before she came to see me for having back pain one day. So I don't have a clear time frame, but I would venture to say it's a while.

Q. I'm really not asking you to speculate. I'm asking --

A. Then the answer is, I don't know the date she started.

Q. No. No. That's fine. I'm just starting my next question.

A. Oh.

Q. I'm really not asking you to speculate, but was there anything about Ms. Falero's affect presentation to you at the time of your May 12, 2015 initial evaluation which gave you clues of a medical nature in terms of how long she had been taking morphine at the high dose that she reported to you?

A. Nothing about her affect. I mean, she didn't appear drowsy or slovenly or anything like that. I would say on some level, I found her to be exceptionally truthful because there are patients who sometimes don't tell you stuff, you know, on the first day they see you or something like that. So she listed everything very forthright on that.

Q. What is your opinion, sir, as to whether Ms. Falero suffered a right shoulder injury as a result of this May 4, 2015

accident?

A. My opinion is she did suffer a right shoulder injury due to the May 4, 2015 accident.

Q. And, please, tell me what you base that on.

A. Again, her -- giving me the history that -- being she was having a worsening before, from MRI finding that -- let me just pull it up (perusing).

Again, she had an MRI finding on July 27, 2015, which again, did reveal an anterior dislocation of the biceps tendon, so the biceps tendon came out of place, and there was a partial thickness tear of two tendons there, two of the rotator cuff tendons. Again, it's consistent with her complaints medically. I have no clear -- I have no record of anything worked up on her right shoulder before and these are, you know -- especially the biceps tendon being out of place, traumatic injuries.

Q. Anything else that you are relying upon in formulating your opinion with

respect to the right shoulder?

A. No. Again, my examination, my physical examination, showing restrictions is consistent, but no, nothing other than that.

Q. Dr. Kaplan, do you know if Ms. Falero had restrictions in her ability to move her right shoulder prior to the happening of this May 4, 2015 accident?

A. I do not.

Q. In other words, you don't know one way or the other?

A. Correct.

Q. How about restrictions in the different planes of range of motion in the lumbar spine?

A. I don't know.

Q. How about the cervical spine?

A. I don't know.

Q. Sir, what is your opinion with respect to whether Ms. Falero suffered a left shoulder injury as a result of this May 4, 2015 accident?

A. It's my opinion she did suffer a left shoulder injury due to this accident.

Q. I apologize for being so boring at this point, but what are you basing your opinion on at this point?

A. Again, the patient history, examination findings is consistent with what she was telling me about her complaints, MRI findings consistent with that, including again, two tendon tears. The MRI of the left shoulder was March 3, 2016. There was contusion and edema still of the humeral head. There were cartilage tears, otherwise known as labral tears or SLAP tears. She had a partial tear of the biceps muscle and tendon, and there was some hypertrophy or arthritic changes of the acromioclavicular joint, which that probably was somewhat longstanding.

Q. Anything else that you're basing that opinion on, anything else that you are relying upon in coming to or arriving at that opinion?

A. No.

Q. Sir, do you have any other or further opinion with respect to Ms. Falero's right shoulder or left shoulder?

A. Opinions on causality?

Q. Opinions on causality, for one.

A. No. My opinion is that it's from this accident, May 4, 2015.

Q. Now, would you agree with me that one component which provides the basis for your opinion on causality with respect to the cervical spine and the shoulders is a lack of any medical documentation to indicate or signal a problem in these areas preceding or predating the May 4, 2015 accident?

A. I will say that in large part, yes, but, you know, again, that, I guess has to be quantifiable, meaning hypothetical, if she had a doctor's note from two years prior where she mentioned a shoulder or neck pain - and again, we're talking hypothetical, I don't know - and he made mention of it and the motions she described were fairly normal and he never sent her for an x-ray and he never sent her to an orthopedist or to -- you know, that's one thing. If there's a note from May 3, 2015, I've stressed to the patient the absolute urgency for immediate neck surgery

based on this MRI and this EMG and the three other surgeons recommending it and I told her I will not be her doctor if she doesn't do this, then I'm going -- I would be less apt to say that.

But, you know, even if you had an MRI, let's say, from one year before that showed a herniation, same level, but she never required, you know, certain amounts of care, there's consideration of epidurals, surgery and so forth, this accident can make something that is seemingly mild, just like her general complaints, go from something she can live with and manage with medication and not require procedures to this level that she can't. And so even if you had an MRI, it doesn't completely -- it doesn't necessarily refute my opinion that I would -- that I could stand by this, I could.

So I'm just saying this because you said, if I had records, that's what I'm -- but I'm also saying yes, but that's not the full criteria. I still can analyze that prior -- it's not any prior medical record

that you can throw at me and say, I have a piece of paper from Dr. Smith, 2012, your case is invalid. No, I'm not saying that. It would have to be, again, medically consistent to change my opinion.

Q. Okay. I understand what you're saying. You would like to see as, an example, the length of time prior to May 4, 2015 that she was complaining about pain or difficulty with a certain body part or a certain body function before revisiting your opinion?

A. Not just length of time --

Q. Not just length of time, but --

A. -- but severity, options discussed with patient, tests sent for, specialists called into the case. All of that, you know, would have to be included and, you know -- yeah, you know, that's the whole pack -- it's not just one note that can refute my thing.

Q. Right, because you, as a physician, like to have all the information at your disposal before coming to a final opinion?

A. You know, I'm giving you my final opinion. I think that as -- I won't quote "a lot," but sometimes the words I use is -- with a reasonable degree of medical certainty, I think it's incumbent on you to have to produce something real and not make me live in a hypothetical that that's the situation.

So do I want to see all, no. I'm giving you my opinion. That is my opinion, not changing. You have to change it. I'm not retracting my opinion because you're raising a hypothetical, understand?

Q. Yes.

A. Or even verified in your mind, understand?

Q. Now, we know that prior to Ms. Falero walking into your office, by her own account, she was suffering from bursitis.

What body parts did that affect, the bursitis?

A. She told me her hips.

Q. Bilateral hips?

A. Correct.

Q. What is your opinion with respect to whether Ms. Falero suffered a hip injury on either side as a result of the subject accident?

A. I do believe she suffered an injury from this May 4, 2015 accident to the hips. Let me just pull something -- you know, it was to both hips, one is worse than the other. Let me just see here (perusing).

So on the left hip, left hip MRI, July 22, 2015, she did have a partial tear of the gluteus medius tendon. It's a muscle tendon in the buttock. It's deep to the main buttock level. So, again, this implies that there is, you know -- this is a physical injury. This is not a degenerative thing. This is something like immediate, rush push-off with the leg trying to move quickly that can tear a muscle like that.

She also had a tear of the labrum, which is a cartilage. She did have degenerative changes, which is arthritis, which is not related -- the degenerative change itself is not, let's say, caused by

this accident of May 4, 2015. Levels of inflammation around degenerative changes can go up or down based on exacerbation including this accident. But the tendon tear of the gluteal muscle, the cartilage tear is an indication of physical trauma to the left hip.

In the right hip, again, she did have some degenerative changes, which I'm going to say those degenerative changes were not caused by the May 4, 2015 accident. Levels of symptomology can come because -- again, she told me she had bursitis, but she's already been proved twice wrong in what she told me. She told me she had a herniated disc and she did not have it before on the lower back and to me, she told me she had arthritis, when, in fact, the MRI did not reveal arthritis.

Q. You said "x-ray" before. I don't know if you meant to or --

A. MRI.

So the MRI of her back, she told me she had a herniated disc before this, but the MRI that I have before doesn't show it.

She told me she had knee arthritis. When we did the MRI of the knee, there is no arthritis.

Q. So you never did a left knee x-ray?

A. Correct.

Q. Okay.

A. But we did an MRI, which can show arthritis. And so, you know -- she said she had bursitis. Again, given -- if I give her that, as she is accurate on that, then her doctor or she did not believe she had arthritis in the hip, which she has, which I'm not saying was caused from May 4, 2015, but symptomology related to the arthritic change can commence on that day. And there was a question of a labrum tear. The radiologist did not read it as definitive.

Q. So you're basing it on the patient history, you're basing it on the MRIs, you're basing it on findings in the office?

A. Yes. She had restrictive motion in her hip on examination.

Q. Anything else?

A. No.

Q. I think you recognize by this point in the day, I'm not here to fight with you on any of this.

A. I know. You're a good guy.

Q. You're also basing this on a lack of medical documentation regarding problems with her hip prior to the time of the subject accident, and it's not really a got-you question. I just want to know how strongly you feel about this.

A. I'm going to say -- take the hips, for example. I will say, in large part, because if she's telling me that she had this accident and now her hip pain is worse than three days ago, even if she had an MRI of her hip three days before this, that accident caused worsening in her mind, at least, pain.

And what we want is to maybe push away pain and things like that. She apparently wasn't using a cane, she went to using a cane. So even, you know, when you talk about that, you -- it seems to be, and I don't want to put words in your mouth, that if you have anything in the world before May 4th that it can

strongly refute or conceivably -- or even hold that possibility, I'm going to say I don't really accept that. I'm open to the possibility that I could have to say some other words, but in terms of saying everything before can be admitted as a refutation, I -- I can't go along with that.

Q. I'm sorry. That was a lot and --

A. So the last thing I think you were trying to say, in part, and I don't want to hit you over the head, that's what you said, something or another.

Also on the fact that she doesn't have past medical records of the hip that I don't have. And I'm saying, you know, yes, in part, but I'm saying with this -- I'm not going to say caveat, but with this distinction, even if I did have them and even if they showed something, that's not a hands-down refutation of the statement I just made, that I do think her hip is caused -- you understand? It's not an absolute that you can produce anything you want from before May 5th.

Q. I understand and you should keep

repeating that to me.

The deficits that you found on your hip range of motion testing in the office, do you know whether Ms. Falero had such deficits prior to the time of the May 4, 2015 accident?

A. No, I don't. That's every body part. That's the situation.

Q. Okay. So if you keep bearing with me, I'll keep bearing with you. How's that?

A. That sounds fair.

Q. Do you have any other opinion on the topic of causation with respect to either hip, anything that you have not expressed already?

A. No.

Q. Tell me, please, what is your opinion with respect to whether Ms. Falero suffered a right or left knee injury as a result of this May 4, 2015 accident?

A. It's my opinion she did suffer a left and right knee injury due to the May 4, 2015 accident.

Q. Please tell me on the record what you're basing that on, the entirety of what you're basing that opinion on.

A. Again, patient history, a little bit of physical examination, a significant part of the MRI being medically consistent with that.

Q. Anything else, sir?

A. No.

Q. Each time in your office, this patient, Ms. Falero, I believe, 65 years of age when she first came to see you, approximately 160 pounds, when you examined her knees, was she able to extend her knee like into the fully locked position or zero degrees?

A. Correct.

Q. And she would consistently, and this is on both sides, right and left, sir?

A. Correct.

Q. And she would flex the knee or in layman's terms, bend the knee to 110 degrees on both sides?

A. Initially, that's correct.

Q. Did that improve or get worse?

A. At some point, it went up to 115. I have to check if that was probably after her surgeries.

Q. You note that you felt mild crepitus in the knees.

What is "crepitus" and what is "mild crepitus"?

A. Crepitus is a sound, generally, so you hear a crackling or crunching sound within the knee. It's mild. I mean, you can hear it from across the room sometimes. Sometimes it's just mild, you hear a little bit in the knee when it's being moved, while you're moving it, and it's usually arthritic.

Q. Did she develop the arthritis in her knees between May 4, 2015 and eight days later when you first saw her in your office on May 12th?

A. Well, I didn't necessarily diagnose her with arthritis. She told me she had arthritis.

Q. No, I understand. But that finding, that objective finding of crepitus,

is that indicative of -- well, first of all, is it indicative of a degenerative condition existing within the knees?

A. I will say this: That is -- by far, the most likely condition is arthritis, but there are, you know, other conditions that will produce noise. If you have a tear in the cartilage (indicating), like a tear, not an arthritic change, and the edge is rough, you know, you're going to hear something. It may be different, you know -- arthritis is two rough edges rubbing over (indicating). So arthritis is the number one cause of the crepitus sound.

Other injuries can produce sound. It's indistinguishable from crepitus, but you can see on the MRI, it's normal, there's no arthritis. Even on an x-ray if it says arthritis or no arthritis, that finding, the crepitus, is likely arthritis, but it's not the only criteria.

Q. Would you tell me, what is the Lachman test and what are you testing for?

A. The Lachman test is a test for

stability of the knee, so you sort of -- here's the knee joint (indicating). You have one hand above (indicating) and one hand below (indicating), and you motion test and you're trying to see if there's motion. In the two bones, if you have good ligaments, you can't slide them past each other (indicating). They are held intact by the cruciate ligaments. That's really what you're testing, so you see you can't have motion. If it's torn, they're not connected, you're going to move.

So the Lachman test is a test of the -- the anterior cruciate ligament test, which was negative, meaning that aspect was normal.

Q. Is the McMurray test a different type of instability test?

A. The McMurray test is really -- yeah, it's different. It's not really a stability test. It's a test of torn meniscus.

Q. I apologize if I'm remembering wrong. Is McMurray where the examiner presses down on the patella and tries to move it?

A. No, that's a Ballottement test.

The McMurray test doesn't test all meniscus tears. It's mostly in the posterior quadrant. You bend the knee up (indicating), you bring it in (indicating) and with some pressure (indicating), and then you go into a full extension mode, so this was negative.

Q. And it remained negative?

A. Yeah. I think it remained negative, yeah.

Q. Sir, do you have any further or additional opinion on the issue of causation with respect to either knee?

A. No.

Q. What is your opinion with respect to whether Ms. Falero suffered a right or left ankle injury as a result of this May 4, 2015 accident?

A. My opinion is she did have a causally-related injury from the May 4, 2015 accident.

Q. What are you basing that on?

A. Again, based on history, examination, and I will say that -- let me just double-check and make sure (perusing).

So in terms of the ankle, I did not obtain that MRI because I felt it was a much more milder strain and it didn't warrant further workup.

Q. Was it on both sides?

A. Of the ankles, yes.

Q. Have her ankle strains, right and left, resolved?

A. Totally resolved, no. What I have, last note, feels all right -- "She feels the left and right ankle and feet are mild and not often." So not fully resolved, significantly resolved, no.

Q. So I believe that it is your opinion that Ms. Falero suffered bilateral foot injuries as a result of this May 4, 2015 accident?

A. Correct.

Q. And I believe that that's based on the history that she gave you and your examination of her, but nothing else?

A. She had a -- hold on (perusing).

Q. She had prior surgery to the one foot --

A. Right.

Q. -- with screws?

A. I don't see screws -- hold on (perusing).

Q. I thought I saw screws over the metatarsal?

A. Let me see (perusing).

No, I don't see -- I don't see any comment here about metal in the foot. It says, postoperative changes, all of her ligaments and all of her tendons were intact.

Q. Dr. Kaplan, have you ever seen the emergency department chart from Kings County Hospital --

A. No.

Q. -- where she went immediately following this accident?

A. No.

Q. What injury did she sustain to her feet? Was it a strain?

A. Strain, a mild strain.

Q. Taking a look, please, at your most recent evaluation from earlier this morning, have those strains resolved?

A. I will say not totally, but significantly. She had mild pain. I'll just say, again, initially, as compared to other body parts, her feet were not the worst.

At one point, they flared up a little bit. There was consideration to send her to the podiatrist, and then they went down again. We agreed she didn't need the podiatrist. So it's a mild strain, didn't need to see a doctor or get surgery or anything like that.

Q. Now, I really have not had an opportunity to go through your August report. Can you please summarize, what is her state of health at this present time?

A. All right. So I will say this -- let me also take a moment to read this (perusing). So in terms of -- I'll read you the plan and that may explain some things.

Q. Sure.

A. So we continued her on physical therapy, but just once a week at this point. I did recommend she follow up with Dr. Moise, the pain management doctor. Why? Even though

she had very good results with the epidurals, the medial branch blocks, there was some aspect of the pains starting to come back, and I recommended she speak with him about a spinal cord stimulator -- a spinal cord stimulator to help control chronic pain.

I'm not saying I strongly stated she had to have it, but I did recommend that she should speak to Dr. Moise as a consideration. As a doctor, I'm supposed to talk about options and she was still having pain. And I believe she has not as of yet seen Dr. Moise to discuss that. He may recommend that. He may recommend repeat epidurals.

I, in addition, recommended that she follow up with Dr. Faloon just to get one more contact with him and opinion to consider surgery. I think when she first saw him, she had not had as many injections with Dr. Moise and so she had done more full series, so she should go back and see him to consider surgery. An option is to -- even if he recommends it to say thank you, but no thank

you, that would be her option.

Again, over some last months, there was some exacerbation of the left shoulder pain, but while it was doing better after the bursa injections, I did recommend that she go back and see Dr. Scilaris because on the last visit or two, the left shoulder was not doing as well as some months before that. There is a consideration that surgery could be done to the left shoulder and I again sent her to Dr. Lempert.

So she was doing -- on the one hand, she was doing better, especially after getting her knee surgeries. I think that helped her very nicely. I mean, she, again, as I stated, was a little reluctant for evasive things in the beginning, but I think I have in one of the notes she was very pleased with the results of the left knee surgery and that helped convince her, you know, I'm going to do my right too because I realized how much this helped me.

So she's doing better. There's still a little bit of a setback going on with

the spine and the left shoulder that could require further surgical attention.

Q. I apologize if I asked you this. Do you know if Ms. Falero has been on Social Security Disability since around 2007, why she has not worked since 2002?

A. I don't have the exact reason for that.

Q. What is your understanding, if any?

A. That it's related to the gestalt of her prior pain conditions. Could it be from blood pressure, I don't know. It's not unusual. There are people who go out on high blood pressure, diabetes kind of things. It's rare. So some aspect of these previous pain conditions that she mentioned to me, you know, and again, I don't have the paperwork she filed with them, so I don't know.

Q. Did you ever ask her?

A. You know, I don't have anything documented. It's possible that in a brief question or something I did and it may have made sense, I didn't even put -- you're out

for some aches and pains, yeah, okay, and it made sense. I didn't think it was psychiatric. She didn't tell me, oh, no, it's for psychiatric or something.

So it's possible I had that discussion with her. It was quick. It was congruent to maybe what I was thinking and I didn't note it, but I don't have it documented.

Q. I know what you mean by "gestalt," but what do you mean by it?

A. You put all of her conditions together, the neck, the back, the fibromyalgia, all -- everything that you're allowed to file on a Social Security Disability, you can.

Q. Well, what is "fibromyalgia"?

A. Well, fibromyalgia is a condition where the person does have multiple aches throughout their body. It's not well-known on the etiology, like it doesn't have to be a structural cause, it doesn't have to be any joint problem, just tender and a complaint of pain with 15 parts of the body. Usually,

tests are negative. The latest thinking is due to some type of mitochondrial dysfunction, the mitochondria of the cell, but they're not sure. No super great treatment for it, some modifications. But "myo" is for muscle and "algia" is for pain.

Q. Is it acute pain? In other words, how does it manifest itself?

A. It manifests by multiple body parts and it has to be some duration of time, you know, meaning if I put anybody out of shape, let's say, to work doing moving today, 18 hours of moving boxes, you and me, and we ache all over, that's not fibromyalgia. Even though we're hurting all over, it's got a medically explainable cause to it. You did all this extra work. It's going to go away.

This is -- there is no explainable cause for it, you know. It generally takes some time to develop. It starts in one area, two areas. By the time you're at the doctor and he's checking you, got it in multiple areas, multiple areas of tenderness, the tests are negative. There's

no test that shows fibromyalgia.

Q. So how do you determine whether it's fibromyalgia versus a psychosomatic condition?

A. The answer is this: It's somewhat interrelated. People who have fibromyalgia have a higher rate of depression in the general population, whether it's cause and effect or result. You have pain in all these parts for some period of time, people get down, so they're often together. They don't have to be. You can have depression or something like that without aches and pains, but, you know, psychosomatic is -- how do I say this? I guess, you know -- there are levels to psychosomatic, so, you know, it's for a psychiatrist to get involved in, if that's what you want to prove the difference for. But there are associations with depression with fibromyalgia.

Psychosomatic, it does imply "psycho" causing the body, and that, you know -- like ulcers have been -- before they knew about the bacteria, right, it was always

psychosomatic. You're stressed out, you got an ulcer in your stomach, "psycho" causing "somatic." There are healthy people with no depression and they have fibromyalgia, so it's not contingent, but there is a greater association of depression with fibromyalgia.

Q. There's a linkage --

A. It's an association.

Q. What is the difference, please, between "bursitis" and "arthritis"? They're both "itis." They're both inflammations.

A. "Itis" means inflammation anywhere, uveitis in the eye, gastritis in the stomach. So arthritis is of the joint cartilage, so it's in the joint.

Bursitis, so tendons -- very often the muscle comes, you know, at the end of the tendon and the tendon is attaching to the bone and it may be traveling over a prominence or, let's say, a bump in the bone. So the body has a bursa between the bone and the tendon or even the ligament, which normally is like two thin layers of a slightly lubricated tissue that allows gliding of the

tendon over the bump. So if a tendon has to go over this bump (indicating), the body might have a little bursa there (indicating). So when you're moving your tendon (indicating), this grease -- you know it's not grease, right, but there's some lubrication there.

Due to injury, due to overuse, you can start to produce so much inflammation, the two layers separate, and there's fluid now in that bursal sac.

Q. Beneath the lining?

A. In between the lining. So, let's say, there's a thin lining here (indicating), right, and now the tendon is coming over (indicating), because that lining is, you know, blowing up like a balloon. Now the tendon is also being pushed up (indicating) and starts working at a funny angle, a nonmechanical angle (indicating).

Q. Would you tell me, please, what is meant by the medical term "sciatica" and how does sciatica manifest itself?

A. So, you know, sciatica, doctors use that word. It's generally also a layman's

term. It's pain down usually the back of the leg. It's felt to be, you know, inflammation of the sciatic nerve. The sciatic nerve itself is really made of several branches.

The sciatic nerve begins in the buttock. So it's -- the sciatic nerve is not actually coming from the spinal cord. The nerves from the spinal cord come out. They group together. They form the sciatica. So usually what people have is the radiculopathy, but they will say, oh, I have sciatica. Radiculopathy is a big word for people to use, maybe, I don't know.

There are a few people with true sciatica, let's say, that that nerve is being pinched in the buttock. It could be from a tumor or something like that. They have no back involvement. They just have this sciatica. So I think that's -- yeah, that's it.

Q. Is there not some type of a test where you press down upon the sciatic notch and you can elicit a painful reaction from the patient?

A. The answer is yes. You know, again -- there is that test, yes.

Q. At Spine & Orthopedic Rehab Center, is it the practice of the office when a patient comes in for a physical therapy session to have the patient sign a sign-in sheet of any type?

A. Yes. There's a sign-in sheet.

Q. Doctor, is that something that has become required by insurance, to have a sign-in sheet, or is it just good practice to document that the patient was there?

A. Well, I know it's good practice, so we've always done it since I've been working at this office. Is it the law, I don't know. Does the insurance company deny payment if you can't prove it, I don't know. We have sign-ins. Every patient signs in. I'm not sure if it's put in the computer, so I'm not sure where they keep it.

Q. Now, you mentioned a short while ago in passing that you're not in court a lot.

In this calendar year, 2017, approximately how many times have you

Charles Alan Kaplan, M.D.

testified either here at a deposition or in a trial setting?

A. In a trial setting, zero. In a deposition like this, I don't think it was 2017. I think I did something the end of 2016.

Q. Dr. Kaplan, did you testify at trial in 2016?

A. I don't know. I would say since I've been with Dr. Kyriakides, which, again, is middle 2008 to now, I've been to court four times, maybe five times.

Q. When you say "court," are you talking about like a workers' compensation setting or --

A. No, over --

Q. Over here at Kings County Supreme?

A. Yeah.

MR. KENDRIC: Can you mark this, please?

(Kaplan, M.D. Exhibit C, Curriculum Vitae of Dr. Kaplan, marked for identification.)

Q. Dr. Kaplan, take a look at this, if you don't mind (handing).

Is that a current copy of your curriculum vitae?

A. Um...

Q. Relatively current?

A. I would say it is. I generally don't submit -- everything here is true. Let me just see (perusing). So I'm not in all these professional societies anymore.

Q. Which ones are you in and which ones are you not?

A. I'm only in the American Academy of Physical Medicine & Rehabilitation right now.

Q. Were you in these other organizations but you let it lapse for one reason or the other?

A. Correct.

Q. Okay.

A. And so private practice -- so I had my own practice from 1992 to the end of 2005. Then I actually moved to Israel for two and a half years. And then when I came back,

I worked for Dr. Kyriakides, so -- I knew him for years. We did training together, so I don't know if I even submitted this to him, hey, I need a job, because that's not how it happened. So this is something I probably had in my computer and it's still there. And everything is accurate.

Board certification is updated, I'm good through 2024. License is good. I'm no longer a clinical instructor at NYU. When I moved to Israel, I gave that up because I didn't know I was coming back. So yeah, that's fairly up to date.

Q. What does this say, "ABEM board certification" (indicating)?

A. Oh, American Board of Electrodiagnostic Medicine. So, again, I did get certified in that, which was valid for 10 years, EMGs. And then, again, when I moved to Israel, I thought I was moving for good. I'm not going to redo the test on that. I'm not a neurologist. I don't need it.

Q. I understand, but you have allowed that one to lapse?

A. Correct.

Q. But your physical medicine and rehabilitation board credentials are current?

A. Current and up to date through 2024.

Q. Being that your medical practice is here in New York and being that Ms. Falero lives in Brooklyn, why was it that she received ambulatory procedures in New Jersey, in Englewood? Why is that?

A. The decisions to do them were by Dr. Moise and Dr. Scilaris. That's where they do them.

Q. But Dr. Scilaris is licensed to practice here in New York, isn't he?

A. He's licensed in both.

Q. I saw him on the letterhead of the different facilities.

The decision was done to bring her over to another state to do these in-office procedures, can you explain that for me?

A. I can only say what I stated. I can't explain that to you. That's their

decision. Dr. Moise is his own separate corporation. That's how he does things. I can't comment on that.

Q. Is Health East still treating patients?

A. As far as I know, yeah.

Q. Because we spoke about the fact that Dr. Scilaris opened up that South Dean Street Orthopaedics.

Is he still with Health East?

A. You're asking me questions that I truthfully don't know the answers to. I mean, I believe that Health East is also on Dean Street. I don't know if it's the same building, a side entrance. I don't know his, you know --

Q. Right, that's precisely why I asked the question. I see that Scilaris now is operating under the name South Dean, and that's what causes me to ask the question.

Is Health East still operating?

A. The answer is I'm under the assumption yes, but this is like a corporate question. I'm not involved with it. I don't

know. From, again, I think two years, three years, there was some talk of maybe having it being a multidisciplinary group where Scilaris and Dr. Kyriakides were one corporate entity and I think that's where they were going, and then I heard it fell through. But I really don't ask a lot of questions there. I'm not privileged. It's -- I don't want to know anybody's business about, you know -- that's not me. I work there, and that's it.

Q. So the fee charged today was $6,000, and my question to you is, if called to testify at trial in this matter, will your fee also be $6,000 or is it a different fee structure based upon the fact that you might be testifying for half a day versus a full day in court testimony versus out of court testimony?

A. The answer is this: I don't have a full answer for you. I'm sure there will be some fee. All these things are arranged by Maria, who handles it, tells me where to go, and she sets the price. You know, she's never asked me what I wanted to charge. It's always

been she told me, this is the fee. It's never happened in, again, my four, five times -- because I think one was, okay, go for half a day, and it got around lunchtime and they didn't cancel my afternoon patients, but it ended, so I don't know how she really does it.

But there would be a fee. And there probably is -- if you promise it will be a half a day, it probably could be a half day for you. But, you know, that's not a tactic, Dr. Kaplan, say what I want or you don't get lunch today, you know. So that's between -- I never asked her what to charge. She's always told me what it is.

MR. KENDRIC: Okay. Thank you.

MR. FAYYAZ: I just have two follow-up questions.

EXAMINATION BY

MR. FAYYAZ:

Q. Dr. Kaplan, at the time of the initial evaluation on May 12, 2015, did Ms. Falero ever tell you if she had any headaches prior to this accident of May 4, 2015?

A. I don't have anything documented about her telling me that.

Q. In arriving at your opinion as to causation of the claimed right knee and the left knee injury arising out of this accident, did you also take into consideration the surgeries that she underwent for the right knee and the left knee after this accident?

A. Did I take into consideration the fact that she had surgery?

Q. Yes.

A. I was thinking about that when you asked, but I'm going to say no with this explanation: Let's say there was something completely unusual, like we did an MRI and there was a bone tumor, and I said, Dr. Scilaris, I want to do bone tumor surgery under this case. For that, I'm sure Dr. Scilaris would say, no, you've got to see a specialist on bone tumors. It's not accident-related.

So my opinion was that it was causally related, and Dr. Scilaris' actions, we'll say, were congruent to that. He didn't

have past notes. He only had what I had. So his -- doing the surgery is congruent with my opinion. That's why I referred her to him, because I thought they were causally related. I'm treating for the accident. I'm not treating anything before the accident, and that he felt it was surgically appropriate to do the surgery through this accident, and fortunately, she had good results.

So it doesn't change my opinion. It's congruent with my opinion and there was nothing -- what's the word? Zebra. There was no zebra finding of the tumor or something like that which he would oppose. So there's nothing about her having the surgery that changed my opinion.

MR. FAYYAZ: That's it.

MR. KENDRIC: Thank you.

MR. FAYYAZ: Thank you.

(Time noted: 2:00 p.m.)

Charles Alan Kaplan, M.D.

A C K N O W L E D G M E N T

STATE OF NEW YORK)
:ss
COUNTY OF)

I, CHARLES ALAN KAPLAN, M.D., hereby certify that I have read the transcript of my testimony taken under oath in my deposition of August 25, 2017; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

_____
CHARLES ALAN KAPLAN, M.D.

Signed and subscribed to before me, this_____ day of _____, 2017.

_____
Notary Public, State of New York

----------I N D E X----------

----------EXHIBITS----------

C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

I, CHRISTINE DEROSA, a Notary Public within and for the State of New York, do hereby certify:

That CHARLES ALAN KAPLAN, M.D., the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of September, 2017.

Christine DeRosa

CHRISTINE DEROSA